FILED
APR 14 19
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 860

IN THE MATTER OF

THEODORE W. MILLER, AN ATTORNEY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

THEODORE W. MILLER,
209 S. LaSalle Street,
Chicago 4, Illinois,
Pro Se.

THE DONNELLEY-GARRISON PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
Opinion of State Court (Reference to)	1
Jurisdiction	1
Questions Presented	2-11
(a) First Question	2-5
(b) Second Question	5-6
(c) Third Question	6-8
(d) Fourth Question	8-11
Constitutional Provisions	5-6
Statutes Involved	9-10
Statement	11-21
Manner of Raising Federal Questions	22-24
Argument	25-32
Reasons Relied on for Allowance of Writ	32-33
Conclusion	34

APPENDIX.

Opinion of State Court	1-12
Judgment of State Court	13
Order denying rehearing	14
Letter to Perk Foods Company	15
Power of Attorney to Lee W. Mida to register "Perk" (Respondent's Ex. 4)	16
Same to Mida, Richards & Murray (Respondent's Ex. 8)	16
Evidence re custom of using "Counsel" & "General Counsel" of Mida's	17, 18-19
Letter to Bell Company, Inc.	19

Letter to Steele Wedeles 20
Power of Attorney from Ace Engraving and Embossing Co. to Mida, Valentine & Jones..... 21
Power of Attorney from Bell Company, Inc. to Mida, Richards & Murray 21
Power of Attorney from Steele-Wedeles Company to Theodore W. Miller 21
Testimony of Gerrit Groen 22-24
Testimony of Axel Hofgren 24-25
Report of Div. IV of Grievance Committee.....25-26
Motion to Refer Report of Div. IV of Grievance Committee and Objections to Special Commissioner....27-43
Motion to Strike same 44-48
Trade Mark Rules of U. S. Patent Office.....49-53
Letter from James S. Valentine to Los Angeles Soap Co. 53-54
Letter from Millwork Supplies, Inc. by Ellis (James S. Valentine) 54
Objections to findings re Patent Office proceedings as practice of law 55-56
Vigilance Agreements 56-57
Unclean Hands and Unfair Hearing.....57-63
Rule 59—Rules of Supreme Court of Illinois.....63-68

CITATIONS.

Cases.

Bridges v. California, 314 U. S. 252 6
Charleston & Western Carolina R. Co. v. Varnville etc., 237 U. S. 597 32
Commonwealth of Penna. v. Steve Nelson decided April 2, 1956 .....11, 31-32

First National v. Hartford, 273 U. S. 548..... 6
Kingsland v. Garcia, 338 U. S. 318 31
Nashville & C. & St. L. R. Co. v. Wallace, 288 U. S. 259 6
Nixon v. Condon, 286 U. S. 73, 88..... 6
People v. Goodman, 366 Ill. 346 22
Rice v. Santa Fe Elevator, 331 U. S. at 230..... 32
Stock Yards Bank Case, 344 Ill. 342..... 22
In re Summers, 325 U. S. 561.....5, 32 and 25, 26
Truax v. Corrigan, 275 U. S. 312, 324.....26, 27

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. .....

IN THE MATTER OF

THEODORE W. MILLER, AN ATTORNEY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above cause on January 16, 1956 denying a petition filed December 19, 1955 for rehearing of the Court's judgment of November 23, 1955 suspending petitioner from the practice of law for one year.

CITATION TO OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 7 Ill. (2d) 443, and is found in Appendix, pp. 1-12. The petition for rehearing was denied without opinion. (Appendix, p. 14.)

JURISDICTION.

The judgment of the Supreme Court of Illinois was entered November 23, 1955. (Appendix, p. 13.) Rehearing

was denied January 16, 1956. (Appendix, p. 14.) The jurisdiction of this Court is invoked under Section 237b of the Judicial Code (28 U. S. C. Sec. 344b).

QUESTIONS PRESENTED FOR REVIEW.

I and II. The Supreme Court of Illinois in its opinion (Appendix, pp. 1-12) held that petitioner after acquiring a business known as Mida's Trade Mark Services conducted himself "wholly inconsistent with the Canons of Ethics." (Appendix, p. 8.). In support of such finding it referred to five letters sent out by respondent from which the Court concluded: "Thus it will be readily seen that Mida's Trade Mark Services, as carried on by respondent, lent itself as a means of procuring professional employment for him." (Appendix, p. 11.)

These five letters all pertained to trade mark registration matters in the United States Patent Office, which type of work had been the primary business of Mida's Trade Mark Services since 1889. Its owners, William Mida and later his son, Lee Mida, had been licensed by the Patent Office and it had many clients throughout the country who still looked to the Mida's organization, which had registered their marks, for keeping said marks in good standing, either by keeping the registrations thereof renewed or preventing dilution of the marks by preventing registration by others of the same or similar marks for the same kind of goods. Every registration client of Mida's had an agreement (called "Vigilance") (Appendix, p. 57) with Mida's to advise the client whenever something threatened his rights, like an application for a possibly conflicting mark being published in the Official Gazette of the Patent Office, and the Mida organization through its general counsel would, if requested, oppose the application. Briefly, the accused letters were:

(1) A letter (Appendix, pp. 8 and 15) sent under the letterhead of Mida's Trade Mark Services to a former Mida *trade mark registration client* (Appendix, pp. 16-17) to combat a letter (Appendix, pp. 53-54) from a former manager of Mida's who had solicited the clients' trade mark registration work by telling the client that Mida's (due to Bar Association pressure) could no longer handle trade mark registration work. This letter referred to petitioner as the "general counsel" of Mida's in accordance with long established custom (Appendix, pp. 17-18) and stated, without any misrepresentation, his qualifications for handling such work so that the client would not be alienated.

(2) The second letter (Appendix, pp. 8, 9), also on a Mida letterhead, referring to petitioner as general counsel, was in response to an entrapment letter (Appendix, p. 54) from the same former manager of Mida's (who was working with the Chicago Bar Association) falsely pretending to seek trade mark registration work by Mida's. Thus the letter from Mida's was an answer to a decoy inquiry letter and could not possibly be solicitation.

(3), (4), (5). The third letter (Appendix, p. 9), fourth letter (Appendix, p. 19) and fifth letter (Appendix, p. 20) were all sent out either to former Mida *trade mark registration* (not merely search report customers) *clients* (See Appendix, p. 21, par. 400 and p. 21, par. 397 for former powers of attorney to Mida to register the very mark involved in the letter) in pursuance of the "Vigilance" agreements (Appendix, p. 57), or to a *client* of petitioner by whom he had been previously personally retained (Appendix, p. 21, par. 401) for trade mark registration work prior to the accused letter. The letters pertained to the very trade marks which petitioner, or the Mida's organization, had registered (Appendix, p. 21, par. 400 and p. 21,

par. 397) for these clients in the Patent Office which trade marks might be jeopardized by the applications of others for possibly conflicting marks which had appeared subject to opposition in the Patent Office Gazette. Hence the obligation of vigilance owed to these clients by Mida's or petitioner was fulfilled by these letters.

These letters only came to the attention of the Chicago Bar Association because the clients involved had been alienated (unbeknown to petitioner) by the former manager (Appendix, p. 62) of Mida's who had been soliciting (Appendix, pp. 53-54) the clients by telling them that Mida's, due to Chicago Bar Association pressure as aforesaid, could no longer handle trade mark registration work.

It is standard practice (Appendix, pp. 22, 23, 24, par. 125) for patent and trade mark attorneys to notify their clients of applications for possibly conflicting marks appearing in the Patent Office Gazette subject to opposition and to not only offer to oppose them, but to sometimes recommend filing an opposition. Some regard it as a duty to the client without any specific agreement. Petitioner's organization (Mida's), as it was run previous to his acquisition, had agreements (Appendix, p. 57) to so notify clients in relation to the particular mark registered. The letters referred to, of petitioner, never recommended filing an opposition nor even gave an opinion of conflict, but left that entirely up to the client.

Not one of the letters was directed to a search report customer of Mida's for the purpose of converting the search customer into a trade mark registration (or opposition) client of petitioner. All were directed to former trade mark registration clients of the Mida's organization, a fictitious entity (fabricated) which had requested trade mark registration or a former trade mark registration client of petitioner. There was, therefore, no solicitation within the meaning of the Canons.

Thus the questions presented include:

FIRST QUESTION: Does the suspension of petitioner from the practice of law for one year by the Supreme Court of Illinois constitute a case in controversy reviewable by the Supreme Court of the United States under Article III, Sec. 2, Cl. 1, of the Constitution of the United States?

Constitutional Provision Involved in First Question:

Constitution, Art. III, Sec. 2, Cl. 1:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other Public Ministers and Consuls;—to all cases of admiralty and maritime Jurisdiction;—to controversies to which the United States shall be a Party;—to controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Pertinent Decision of This Court Thereunder:

In re Summers, 325 U. S. 561.

SECOND QUESTION: Was the action of the Supreme Court of Illinois in suspending petitioner from the practice of law for one year for writing or causing to be written the five letters referred to, which is the reason stated on the face of the opinion (Appendix, pp. 8-10) and which, according to said opinion, involved no violation of law nor any act tainted with moral turpitude (Appendix, p. 12), unjust and unreasonable, and without due process of law, and hence a denial of the rights of petitioner under the Fourteenth Amendment of the Federal Constitution?

Constitutional Provision Involved in Second Question:

United States Constitution, Amendment XIV, Sec. 1:

"• • • No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Pertinent Decisions of This Court Thereunder:

Nashville, C. & St. L. R. Co. v. *Wallace,* 288 U. S. 259.

Bridges v. *California,* 314 U. S. 252, 259-60.

Nixon v. *Condon,* 286 U. S. 73, 88.

First National Bank v. *Hartford,* 273 U. S. 548, 552.

Truax v. *Corrigan,* 257 U. S. 312, 324.

III. The Supreme Court of Illinois has a standing Rule 59 (Appendix, pp. 63-68) wherein it makes the Board of Managers, and its existing committee on grievances and their successors, as such, of the Chicago Bar Association *ex officio* special commissioners of the Supreme Court (of Illinois) to "receive, entertain, inquire into and take proof" concerning complaints against attorneys at law. In petitioner's case a complaint by the unauthorized practice committee of the Chicago Bar Association was filed March 14, 1952 before the Committee on Grievances of the Chicago Bar Association, *not before the Supreme Court of Illinois,* and proceeded *in the Chicago Bar Association's own jurisdiction under said Rule 59 without any special reference by the Supreme Court of Illinois* to hearings before a panel of said Grievance Committee acting as special court commissioners. This panel, called Division IV of the Grievance Committee, after protracted hearings, made a report making an express finding of moral turpitude (Appendix,

p. 26, par. 559) on the part of petitioner and recommending suspension of petitioner for five years. (Appendix, p. 26, par. 560.) The series of hearings before this panel, acting as Commissioners of the Supreme Court of Illinois, were unfair to petitioner for a multitude of reasons which have been set forth in objections (Appendix, pp. 57-63) filed to said report on October 6, 1954. This report and said objections thereto were subject to a hearing by the entire Committee on Grievances and another hearing by the Board of Managers of the Chicago Bar Association.

Prior to the hearing by the entire Grievance Committee and the subsequent hearing by the Board of Managers on his objections, petitioner noted that the Grievance Committee in its entirety and the Board of Managers included members (appointed since the hearings before said Division IV commenced), who had been members of the Unauthorized Practice Committee which had lodged the complaint several years before against petitioner.

Petitioner further noted for the first time that members of the Committee on Grievances and Board of Managers, as well as numerous members of the complaining committee (Unauthorized Practice Committee) included members of the Communist Party and Fellow Travelers. Petitioner, realizing that he, as a known anti-Communist, would be prejudiced in the hearings on his objections before the entire Grievance Committee and Board of Managers, thereupon filed in the Supreme Court of Illinois, a motion (Appendix, pp. 27-44) to refer the report of Division IV of the Grievance Committee and objections thereto to a special commissioner on the grounds of prejudice. Such motion was stricken (Appendix, pp. 44-48) on a motion to strike filed by the general counsel for the Chicago Bar Association on January 14, 1955, without giving petitioner a chance to prove his charges of Communist infiltration and hearings on said objections before the entire Griev-

ance Committee and Board of Managers proceeded, the same as with the hearings before the hearing panel in the Chicago Bar Association's own jurisdiction under Rule 59 of the Supreme Court of Illinois. The objections of petitioner were overruled and the report of the hearing panel was approved by the said entire Grievance Committee and the Board respectively. Such report (Appendix, pp. 25-26) was filed in the Supreme Court of Illinois on April 28, 1955. After a hearing in the Supreme Court of Illinois, said Court on November 23rd, 1955 entered its opinion (Appendix, pp. 1-12) suspending petitioner from the practice of law for one year but expressly holding that he was not guilty of any moral turpitude (Appendix, p. 12), the Court holding that he violated the "ethics of the profession" in writing or causing to be written the aforesaid letters.

THIRD QUESTION. Were the hearings before the Grievance Committee (Division IV and subsequent hearing by the entire Committee on petitioner's objections to the report of said Division IV) and before the Board of Managers on said objections, under the foregoing circumstances so unfair to petitioner as to amount to a denial of the rights of petitioner to due process of law under the Fourteenth Amendment of the Federal Constitution?

Constitutional Provision Involved Under Third Question (See Fourteenth Amendment to the Federal Constitution set forth verbatim above in connection with Second Question).

Pertinent Decisions of This Court Thereunder, Same Decisions Referred to in Connection With Second Question.

IV. All of the matters (Appendix, pp. 8-10) involved, which comprised the subject matter and formed the basis of the judgment (Appendix, pp. 1-12) of suspension of peti-

tioner by the Supreme Court of Illinois nad which under the theory of the Court's findings therein, involved the practice of law and thereby assumed by said Court to be within the police powers of the Supreme Court of Illinois, pertained solely to trade mark registration practice in the United States Patent Office.

Regulation of Practice by attorneys and agents before the United States Patent Office, pursuant to the Commerce Clause of the Federal Constitution is a field which has been occupied by the Federal Government by virtue of the following statutes passed by Congress giving the Commissioner of Patents sole jurisdiction in this field:

35 U. S. C. A. 31, 32 (July 19, 1952, C. 950, Sec. 1, 66 Stat. 795).

35 U. S. C. A. (July 19, 1952, C. 950, Sec. 1, 66 Stat. 796).

U. S. Patent Office Trade Mark Rules 2.11-2.19.

FOURTH QUESTION. Has the Federal Government so occupied the field and is its interest therein so dominant in respect to regulation of practice before the United States Patent Office as to preclude regulation of said practice by the Supreme Court of Illinois under the guise that said practice is the practice of law and within the police powers of said Court?

Constitutional and Statutory Provisions Involved Under the Fourth Question:

35 U. S. C. A. Sec. 31:

"The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of

good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their application or other business before the Office. July 19, 1952, c. 950, Sec. 1, 66 Stat. 795."

35 U. S. C. A. Sec. 32:

"The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded. July 19, 1952, c. 950, Sec. 1, 66 Stat. 795."

35 U. S. C. A. Sec. 33:

"Whoever, not being recognized to practice before the Patent Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense. July 19, 1952, c. 950, Sec. 1, 66 Stat. 796."

Trade Mark Rules Secs. 2.11-2.19 (Published in the Federal Register for July 7, 1955).

These Trade Mark Rules, being somewhat voluminous are contained in Appendix, pp. 49-53, instead of being set out here verbatim.

Pertinent Decisions of This Court.

Decision of this Court in *Commonwealth of Pennsylvania* v. *Steve Nelson,* decided April 2, 1956 (not yet printed in any report system except Commerce Clearing House, Inc., "Supreme Court Bulletin", Vol. 16, No. 18), citing: *Carolina R. Co.* v. *Varnville Furniture Co.,* 237 U. S. 597, 604, and *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. at 230.

STATEMENT OF THE CASE.

This is a disciplinary proceeding instituted by a complaint of the Unauthorized Practice Committee of the Chicago Bar Association, filed March 4, 1952, against Theodore W. Miller, Petitioner, before the Committee on Grievances, also of the Chicago Bar Association, the members of the latter committee acting in their own jurisdiction without any special reference in the instant case and without the instant case having been first docketed in the Supreme Court. Authority for this procedure purports to be in Rule 59 (Appendix, pp. 63-68) of the Supreme Court of Illinois, wherein the board of managers and the existing committee on grievances and their successors as such, of the Chicago Bar Association, are made special commissioners of the Supreme Court of Illinois, to "receive, entertain, inquire into and take proof" concerning complaints against attorneys at law.

THE ISSUES.

The substance of the charge made against Petitioner is that he operates a business and has used that business to increase his law practice. His answer is that in the operation of that business he only received clients who gravitated to him because of his ownership of the business known as Mida's Trade Mark Services in the sense

that the business already had trademark registration clients attached to it who expected trademark registration and opposition services from the business, through its counsel, including notification of anything that might jeopardize the integrity of the client's marks which had been registered through said business. These former trademark registration clients were owed a contractual obligation by the business (or petitioner, as owner) as to this Vigilance service even though the business as to future work was being broken down by petitioner and separated with (1) search work under the business name, and (2) trademark registration work under petitioner's own name. Petitioner further defended on the basis that such indirect accumulation of clients resulting from former trademark registration clients of the business who expected the continuing registration and "vigilance" service from the business or its owner is not an exploitation of a business, nor solicitation within the meaning of the canons of ethics, but only the normal acceleration of a lawyer's practice.

The defense is that a lawyer may own and operate a business alongside of his law practice, if he does not exploit the business with a motive to convert it into a medium of solicitation, thereby to manufacture clients for his law practice; that the mere operation of a reputable business by an active lawyer does not and cannot degrade the profession, nor bring it into disrepute. And that the province of the Court is to control the conduct of the lawyer,—not his business.

The Petitioner, Theodore W. Miller, was admitted to the practice of law in Illinois on June 16, 1927 and before the Patent Office. He put his character in issue and the record shows (Appendix, p. 2) that no complaint had ever been made against him before any Bar Association, Government Agency or Court.

On March 1, 1951 Petitioner became the owner by purchase of Mida's Trade Mark Services, its assets, name and good will, and has since operated its business in his law suite in charge of an office manager who had been employed by Mida's in other capacities for many years.

In 1889 William Mida, who established Mida's Trade Mark Services, was editing a trade journal in Chicago, and to enable tradesmen to make a record of the establishment, aspect and use of trade marks, commenced recording trade-marks in his trade journal called *The Criterion*, a magazine type periodical published in Chicago, Illinois, semi-monthly. That service was timely and served to date the commencement of the use of trademarks and the article or goods to which they applied.

In the course of the years William Mida and his records became a center of information, an information bureau, in fact; so that when the United States Patent Office began recording trademarks under the 1905 Trade Mark law, Mida then had a backlog of twenty years of trade mark history, and his records became an authoritative source of information in trade mark matters.

After the 1905 Act, Mida kept and maintained a complete copy of the records of the Trade Mark registrations in the Patent Office, systematizing the records for ready reference; and upon request furnished an abstract of the records he thus maintained for established fees, or charges. Mida's Trade Mark Services thus became an institution among us, an established business which carries on to this day and is Mida's of today, here in question, now owned by petitioner.

William Mida was recognized by the Patent Office, though a non-lawyer, as a person authorized to register trade marks under power of attorney, and he carried on a registration service as registered agent operating un-

der power of attorney, which was a part of Mida's Trade Mark Services.

Coming out of the 19th Century, Mida's Trade Mark Services functioned as a business entity, and was, in fact, in the minds of the trade mark world, an entity; not an entity capable of being sued or suing, but was an entity in the minds of its owners, clientele, and the public. It had become an institution.

Although, in the record, there may be found statements to the effect that trade marks had been registered by Mida's, there were never any trade mark applications made in the Patent Office in the name of Mida's Trade Mark Services. They were always made in the name of some person acting as counsel for Mida's, authorized to do so by a specific power of attorney, under authority of Rules of the Patent Office.

Upon the death of William Mida in 1915, the business he had established and conducted as Mida's Trade Mark Services descended to his son, Lee W. Mida, who carried on until his death on May 23, 1949, when the business descended to his wife, Lucia G. Mida. Lee W. Mida was also recognized by the Patent Office as an agent entitled to register trade marks. He was also a non-lawyer.

Mrs. Mida was not recognized by the Patent Office as a person competent to register trade marks as an agent; but she endeavored to conduct business until in February, 1950, when by a lease dated February 21, 1950 she rented the physical assets and the right to use them, the good will, and the name of Mida's Trade Mark Services, to one Corlis W. Jones for a period of five years, and in her lease she covenanted with Jones that in consideration of his undertakings therein she would execute a Last Will and Testament and therein convey to him her right, title and interest in the property so leased.

Corlis W. Jones operated Mida's Trade Mark Services under his said lease until February 28, 1951 when he assigned the said lease, with the consent of Lucia G. Mida, to Petitioner, who assumed the obligations of said lease as of that date. The lease was duly performed and upon the death of Lucia G. Mida, Petitioner became the sole owner of said business.

On March 1, 1950, Mrs. Mida engaged Petitioner to clean up and finish Mida's trade mark cases then pending in the Trade Mark Office at Washington, D. C., and some pending applications for registration then pending in the offices of Secretaries of State in some of the states which had been commenced by her husband. That service Petitioner was fitted by education and experience to render. (Appendix, p. 2.)

CONGRESS ALLOWS NON-LAWYERS TO ACT AS AGENTS AND REGISTER TRADE MARKS.

The new law of 1946 did not change the practice of non-lawyers preparing and filing applications to register trade marks but the Commissioner was directed to make rules and regulations for the conduct of proceedings.

The rule, as existing, provides that non-lawyers and lawyers alike may register in the Patent Office, one on his showing of talent, the other upon producing his certificate of admission to the bar.

The provisions (35 U. S. C. 11) of the U. S. Code which gives authority to the Commissioner of Patents to make trade mark rules have been set forth above on pages 9-10 of this petition.

By such authority a set of trade mark rules (Appendix, pp. 49-53) have been prescribed by the Commissioner of Patents, providing for practice and conduct before the Commissioner of Patents in the matter of trade mark registration procedures. The following are the applicable rules:

Rule 2.11 provides: "Applicants may be represented by an attorney":

"The owner of a trade mark may file and prosecute his own application for registration of such trademark, or he may be represented by an attorney or other person authorized to practice in trade mark cases. The Patent Office cannot aid in the selection of an attorney or agent."

Rule 2.12 provides:

"Persons who may practice before the Patent Office in trade mark cases. (a) Attorneys at law; Attorneys at law in good standing admitted to practice before the highest court of any State or Territory of the United States or of the District of Columbia, may practice before the Patent Office in trade mark cases. No register of attorneys who may practice before the Patent Office in trade mark cases is maintained, and no application by an attorney at law for admission to such practice is required. A statement in the power of attorney, or in an accompanying paper, of the bar to which the attorney is admitted is required, and recognition is limited to each case.

(b) Non-lawyers: Persons who are not attorneys at law as specified in paragraph (a) of this section are not recognized to practice before the Patent Office in trade mark cases, except that persons not attorneys at law who were recognized for such practice under the rules prior to August 15, 1955 (former Sec. 100.42, and who in fact practiced in connection with applications for registration filed since July 5, 1947, will be recognized as agents to continue practice in trade mark cases in the Patent Office; *Provided,* That, before December 31, 1955, a statement is filed with the Commissioner of Patents requesting that recognition to practice be so continued, specifying the basis therefor.

(NOTE: All persons registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed.)"

Rule 2.16 provides:

"*Suspension or exclusion from practice.* The Commissioner of patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office any person, attorney, or agent shown to be incompetent or any person, attorney, or agent shown to be incompetent or disreputable, or guilty of unethical or unprofessional conduct or gross misconduct, or who refuses to comply with the rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Patent Office, by word, circular, letter, or in any other manner. The reasons for any such suspension, disbarment or exclusion from practice are conducted as provided in Sec. 1.348. (Sec. 35 U. S. C. 1952, sec. 32 for review of the Commissioner's action by the District Court of the United States for the District of Columbia.)"

While the Complaint before the Grievance Committee of the Chicago Bar Association was lengthy and contained many paragraphs framed in general terms, extravagant in language, abusive in nature and unsupported in evidence, the remaining substance of the charge which the Supreme Court of Illinois found to have been proven, according to the Opinion (Appendix, p. .....) of the Court was that "after Respondent had purchased the trade name ('Mida's Trade Mark Services') and good will from Lucia G. Mida" he "entered upon a course of conduct wholly inconsistent with the Canons of Ethics". The Opinion further found (Appendix, pp. 8-10), in effect, that the evidence to support the charge boiled down to petitioner writing, or causing to be written, five letters which have heretofore been referred to on pages 2-4 of this petition. The Opinion (Appendix, p. 11), after reciting these five letters, stated its conclusion therefrom as follows:

"The record does not support the argument of Re-

spondent that he has been practicing law within the limits of the Canons of Ethics, that Mida's Trade Mark Services was not engaged in the practice of law and the practice of law which respondent, as Theodore W. Miller, was engaged in was something entirely different, distinct and apart from the activities of Teodore W. Miller doing business as Mida's Trade Mark Services. On the contrary, the evidence is clear, cogent and convincing that Mida's Trade Mark services, as conducted by respondent, was engaged in a business of a nature, which, if handled by a lawyer, would be regarded as the practice of law. From time to time Mida's Trade Mark Services suggested respondent to customers as an attorney well qualified in trade mark matters. In instances, respondent suggested himself to customers of Mida's Trade Mark Services as such an attorney. Thus it will be readily seen that Mida's Trade Mark Services, as carried on by respondent, lent itself as a means of procuring professional employment for him. * * *" and, in Appendix, p. 12,

"In view of the fact that we do not find respondent's conduct was 'tainted with moral turpitude', as did the commissioners, and in view of the short period of time in which he engaged in the activities complained of, his age, long practice, and hitherto unchallenged standing, we fix the period of his suspension from the practice of law at one year."

The Complaint was not filed in the Supreme Court of Illinois and thereafter referred to Commissioners for taking proof and report, but it was filed by the Unauthorized Practice Committee of the Chicago Bar Association in and before the Board of Managers and Committee on Grievances of the Chicago Bar Association's own jurisdiction under Rule 59 (Appendix, pp. 63-68) of the Supreme Court of Illinois and referred by said Committee to a hearing panel called "Division IV of the Committee on Grievances". Said panel heard the Complaint and rendered a Report (Appendix, pp. 1, 25 and 26), finding petitioner had violated Sections 22, 27, 28, 29, 33, 35 and 47 of the

Canons of Ethics of the American, Illinois and Chicago Bar Associations (Appendix, p. 1) and specifically found that petitioner's conduct was "tainted with moral turpitude" (Appendix, p. 26) and recommended that he be suspended from the practice of law for five years (Appendix, p. 26). In subsequent hearings before (1) the entire Committee on Grievances and (2) the Board of managers of the Chicago Bar Association, said Committee and Board respectively, overruled the objections of Petitioner to the report of the hearing panel (Div. IV of the Committee on Grievances).

The record shows (Appendix, pp. 23, par. 173; 24, par. 180) that all of the letters forming the evidence against petitioner were supplied to the complaining committee by one James S. Valentine, former manager of Mida's Trade Mark Services, who had been surreptitiously processing from his home applications of Mida clients pirated under his management to register trade marks in the Patent Office. This conduct he admitted. The record also shows that this "evidence" was obtained by fictitious letters, fabricated by Valentine, used to decoy responses from representatives of petitioner. This "evidence" was delivered by Valentine to one Gerrit Groen, a member of the complaining committee and competitor of petitioner, who had been conducting the investigation for the committee against petitioner and against Mida's before petitioner's ownership. Both Valentine and Groen were shown to have profited by the break-up of the Mida trade mark registration clientele, by themselves acquiring many of its former trade mark registration clientele. Groen testified (Appendix, p. 24, par. 180) that he never investigated the authenticity of these letters which he received from Valentine, and did not even notice that most of them were responses to inquiries and hence not solicitations as they were charged against petitioner in the complaint, the original draft of which had been prepared by Groen.

Included in the complaint (Appendix, p. 58) was false and defamatory matter pertaining to alleged threatening telephone calls, claimed to have been made by agents of petitioner to business men and lawyers, to force them to give the Mida organization trademark registration work or search work. This matter has been left in the complaint in the Report filed by the hearing panel of the Grievance Committee, even after such matter had been withdrawn from the complaint by the complaining Unauthorized Practice Committee on its own motion when to their great embarrassment they discovered that the phone calls, even more than the complainants admitted on a motion for further particulars (Appendix, p. 59) (Complainants specified only two calls in their bill of particulars), had been made to Groen's clients (Appendix, p. 59) and associates and a client of the attorney (Appendix, p. 59) prosecuting the complaint. The pattern of recipients of the calls connected them with someone close to the complaining Unauthorized Practice Committee. Their source, which admittedly could not be connected with petitioner, was by that same pattern also close to the complaining Committee. Strangely enough, the Mida organization already had the business of the particular attorney who was one of the recipients of the calls; and the trade-mark, the registration of which was the purported purpose of the other call, was already registered in every state and nationally.

The purpose of the inclusion of these calls in the complaint could have no other purpose than to smear and unfairly prejudice the petitioner. It was evident that these calls emanated from the same source, Valentine, working under the same person, Groen, as the other "evidence" in the case. Petitioner himself adduced evidence of the receipt by others close to the Committee of similar spurious calls in order to demonstrate the pattern of the

calls being close to the Committee and the source also instead of the Mida's organization.

Based on the "evidence" resulting from the Valentine fabrications the complaining Unauthorized Practice Committee obtained a *subpoena duces tecum* (Appendix, p. 58) for petitioner's records. At the conclusion of one hearing, counsel for the complaining Committee (Appendix, p. 58) actually seized these records and ran off with them. At the next session, the chairman of the Grievance Committee hearing panel, when advised by petitioner of such high-handed conduct, advised petitioner: "Let's be realistic." The records were then turned over to the secretary of the Grievance Committee.

When Valentine was recalled by petitioner for further examination, the hearing panel refused (Appendix, p. 62) to allow him to be cross-examined as a hostile witness. At other times the hearing panel refused to allow petitioner to examine Valentine as to his motives (Appendix, p. 62), as for instance to acquired the Mida's business and clientele. All these matters to the extent he was able petitioner had to get into the record indirectly and at great effort. The record shows a multitude of reasons (Appendix, pp. 57-63) why the hearing before the hearing panel of the Grievance Committee was unfair to petitioner and especially the hearing on petitioner's objections before the entire Committee on Grievances and the hearing also on said objections before the Board of Managers, in view of the prejudicial make-up of these bodies. This has been heretofore discussed on pages 7-8 of this petition and for brevity is not repeated here.

HOW THE QUESTIONS PRESENTED WERE RAISED IN THE RECORD BELOW.

The Objections Filed by Petitioner (the Then Respondent) to the Report of Division IV of the Committee on Grievances Stand as Exceptions to the Report Which Was Subsequently Filed With the Supreme Court of Illinois.

The opinion (Appendix, pp. 1-12) of the Supreme Court of Illinois (Appendix, p. 1) states:

> "By leave of court the respondent's objections stand as exceptions. • • •"

Referring to the First and Fourth Questions presented, Petitioner, in his objections (Appendix, pp. 55-56) pointed out:

> "All of the Supreme Court of Illinois decisions which increasingly extend the scope of what constitutes the practice of law since the Stock Yards Bank case (344 Ill. 462), under continuous pressure from the Chicago Bar Association, lean heavily upon the Stock Yards Bank case.
>
> In the case of *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346, the Chicago Bar Association succeeded in having the ever increasing scope of what constitutes the practice of law in the view of the Supreme Court of Illinois extended to include the practice before the Illinois State Industrial Commission. In that case, there was a powerful cleavage in the court as represented by the dissenting opinions where Mr. Justice Orr, who had written the opinion for the court in the Stock Yards Bank case, dissented, as did Mr. Justice Jones and Mr. Justice Shaw. (Appendix, p. 56.) • • •
>
> "Likewise, the dissenting opinion of Justice Shaw in this very close case should apprise the complainants of the fact that *having prevailed upon the Supreme Court of Illinois in the Goodman case to invade the executive or administrative departments of Illinois, they are going too far in seeking to have the*

Supreme Court of Illinois invade the executive branch of the Federal Government." • • • (Appendix, p. 56.)

Referring to the Second Question Presented, Petitioner pointed out (Appendix, pp. 16-17) in connection with the letter to the Perk Food Co., (a) that the Perk Food Company (the business name of Ready Foods Company, Inc.) was a former trademark registration client of Mida's, already presumably in the fold, insofar as the organization was concerned, as a client for trademark registration work, and that this letter was sent out to combat the derogatory letters (Appendix, pp. 53-54) of Valentine soliciting the business of this client and others by referring to Chicago Bar Association pressure to prevent Mida's from handling trademark registrations.

Petitioner pointed out in his objections (Appendix, p. 54) that the Millwork Supplies, Inc. letter (second letter in the opinion of the Supreme Court of Illinois) was in response to a fictitious decoy letter (Appendix, p. 54) fabricated by Valentine and thus was not a solicitation for the reason that this fabricated letter, actually from Valentine, requested trade mark registration work from Mida's.

He also pointed out in his objections (Appendix, p. 68) that the term "general counsel" was at first briefly used by petitioner as new owner of Mida's, in accordance with long established past custom (Appendix, pp. 17 & 18) to identify petitioner to the Mida clients who in the past had received registration services from the Mida's organization through its general counsel.

He pointed out in his objections (Appendix, pp. 56 & 57) that the third and fourth letters mentioned in the Supreme Court of Illinois opinion, as having been sent by petitioner to Ace Engraving & Embossing Company and Bell Company, respectively, were sent in fulfillment

of "Vigilance" agreement obligations due the recipients of these letters.

He pointed out in his objections (Appendix, p. 21, par. 401) that the fifth and last letter, referred to in the opinion of the Supreme Court of Illinois, to Steele-Wedeles Company, was sent to a personal client of his and that this letter and the third and fourth letters were in accordance with the standard practice (Appendix, pp. 22, 23 & 24, par. 125) of trademark attorneys, notifying their clients of possibly conflicting marks published for opposition in the Patent Office Gazette.

Referring to the Third Question presented, petitioner pointed out in his objections (Appendix, pp. 57-63) the high-handed conduct and unclean hands of the Chicago Bar Association committees and the prejudiced personnel making up these committees, contributing to the unfairness (Appendix, pp. 60-61) of the hearings. He also raised this question of prejudice by virtue of the personnel of the Bar Association tribunals and committees in his motion (Appendix, pp. 27-43) to refer the Report of the Division IV of the Committee on Grievances of the Chicago Bar Association to a Special Commissioner.

ARGUMENT.

(1) *In support of the First Question presented,* as to whether the suspension of petitioner from the practice of law for one year by the Supreme Court of Illinois constitutes a case in controversy reviewable by the Supreme Court of the United States under Article III, Sec. 2, Cl. 1 of the federal constitution:

This Court has already decided this first question in the affirmative in *In Re Summers,* 325 U. S. 561, 566-569, wherein this Court, in reviewing the denial by the Supreme Court of Illinois of the right of an applicant to practice law because of the latter's refusal to serve in the Armed Forces in time of war, said on page 566:

> "For the purpose of determining whether the action of the Supreme Court of Illinois in denying Summers' petition for an order for admission to practice law in Illinois is a judgment in a judicial proceeding which involves a case of controversy reviewable in this Court under Article iii, Sec. 2, Cl. 1, of the Constitution of the United States, we must for ourselves appraise the circumstances of the refusal. *Nashville, C. & St. L. R. Co.* v. *Wallace,* 288 U. S. 249, 259. Cf. *Bridges* v. *California,* 314 U. S. 252, 259-60; *Nixon* v. *Condon,* 286 U. S. 73, 88; *First National Bank* v. *Hartford,* 273 U. S. 548, 552; *Truax* v. *Corrigan,* 257 U. S. 312, 324."

and on pages 567-569:

> "Where relief is thus sought in a state court against the action of a committee, appointed to advise the court, and the court takes cognizance of the complaint without requiring the appearance of the committee or its members, we think the consideration of the petition by the Supreme Court, the body which

has authority itself by its own act to give the relief sought, makes the proceeding adversary in the sense of a true case or controversy.

* * * * *

"A claim of a present right to admission to the bar of a state and a denial of that right is a controversy. When the claim is made in a state court and a denial of the right is made by judicial order, it is a case which be reviewed under Article III of the Constitution when federal questions are raised and proper steps taken to that end, in this Court."

(2) *In support of the Second Question presented,* this Court indicated in *In Re Summers,* 325 U. S. 561, 566, that it would appraise the circumstances of the refusal to admit or, as in the instant case, the suspension from the practice of law.

Assuming the five letters referred to (Appendix, pp. 8-10) in the opinion of the Supreme Court of Illinois were sent or caused to be sent by petitioner, it is submitted that the Court acted arbitrarily and unjustly in suspending petitioner from the practice of law for one year on that account and that therefore said Court acted without due process of law as guaranteed to petitioner under the Fourteenth Amendment to the Constitution of the United States.

In determining this question, this Court may arrive at its own conclusions as to whether the action of the Supreme Court of Illinois was just or arbitrary. As was said by this Court in *Truax* v. *Corrigan,* 275 U. S. 312, on page 324:

"The facts alleged are admitted by the demurrer, and in determining their legal effect as a deprivation of plaintiffs' legal rights under the Fourteenth Amendment, we are at as full liberty to consider them as was the State Supreme Court. *Mackay* v. *Dillon,* 4 How. 421; *Dower* v. *Richards,* 151 U. S. 658, 667. Nor does the court's declaration that the statute is a rule of evidence bind us in such an investigation. *Bailey* v. *Alabama,* 219 U. S. 219, 238, 239; *Chicago, Milwaukee*

& St. Paul Ry. Co. v. *Minnesota*, 134 U. S. 418; *Mugler* v. *Kansas*, 123 U. S. 623, 661; *Corn Products Refining Co.* v. *Eddy*, 249 U. S. 427, 432. In cases brought to this court from state courts for review, on the ground that a federal right set up in the state court has been wrongly denied, and in which the state court has put its decision on a finding that the asserted federal right has no basis in point of fact or has been waived or lost, this court as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. *Kansas City Southern Ry. Co.* v. *Albers Commission Co.*, 223 U. S. 573, 591, 593; *Cedar Rapids Gas Light Co.* v. *Cedar Rapids*, 223 U. S. 655, 668, 669; *Southern Pacific Co.* v. *Schuyler*, 227 U. S. 601, 611. Another class of cases in which this court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question so as to analyze the facts. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 593; *Jones National Bank* v. *Yates*, 240 U. S. 541, 552, 553. In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard."

Petitioner has heretofore pointed out on page 23 of this petition that the letter to the Perk Food Company was sent to a former trade mark registration client (not merely a search customer) of the business which he had acquired. This was a business, by the way, which had registered trade marks since 1889 and had always used a

counsel or general counsel to act for it in the technical representation of the clients for registration work. Petitioner has also pointed out herein on page 23 hereof that this letter was not sent in *usual* course of his business, but was sent out to combat the activities of the former manager of the business who was soliciting trade mark registration work from the clients of the business by representing to the clients that Mida's could no longer handle registration work. The letter was not sent to any search customers for the purpose of embracing them as trade mark registration clients of petitioner. Presumably and except for the solicitation by Valentine, the former manager, this particular client would still have been a trade mark registration client of the business. Thus there was no solicitation involved within the meaning of the canons and the use of the term "general counsel" in the letter was more to identify petitioner to old clients in accordance with past custom (Appendix, pp. 17-18) than anything else.

As to the second letter to Millwork Supplies, Inc., petitioner has heretofore pointed out that this letter was in response to a letter of inquiry asking Mida's Trade Mark Services to furnish trade mark registration work. The letter of inquiry was fabricated by this same former manager, Valentine. Hence the response from Mida's Trade Mark Services could not possibly be solicitation within the meaning of the canons.

As to the third letter to Ace Engraving & Embossing Co., this was also to a former trade mark registration client of Mida's Trade Mark Services for whom Mida's had registered the very trade mark "Ace", etc. Petitioner has pointed out that a client for whom Mida's had registered a trade mark was owed the service of "Vigilance" in respect to the mark registered, which included notifying the client of any possible conflicting marks published for opposition in the Official Gazette of the Patent Office and to

oppose the application to register any possibly conflicting mark if the client so decided and requested. The letter did not give an opinion of conflict but left that question entirely up to the client; neither did the letter recommend filing an opposition. This was likewise left up to the client.

It is standard practice (Appendix pp. 22-24), as petitioner has heretofore pointed out, for trade mark attorneys to notify their clients of possibly conflicting marks being published, subject to opposition, in the Official Gazette of the Patent Office. Some even express an opinion of conflict and recommend opposition. Petitioner did not do this.

The same thing applies, as has heretofore been pointed out, to the fourth letter to the Bell Company, Inc., for whom Mida's had previously registered the particular trade mark "Flair" to which the accused letter pertained and hence the same "Vigilance" obligations were due this client.

As to the fifth letter to Steele-Wedeles Company, petitioner has heretofore pointed out that he had been personally retained over a year and a half previously by this client for trade mark registration work.

Hence there was no solicitation within the meaning of the canons in any of these letters.

The Court (Appendix p. 12) expressly held that acts of petitioner involved no taint of moral turpitude.

(3) In support of the *Third Question*, there can be no question but what there was no fair hearing and no due process such as the Fourteenth Amendment of the Federal Constitution contemplates in the evaluation of the evidence against petitioner. The highly intemperate findings and recommendations of the Committee on Grievances of the Chicago Bar Association, retained as commissioners, shows in itself how biased those commissioners were and such bias cannot have done otherwise than have adversely affected the evaluation by the Supreme Court of Illinois of

the evidence. The high-handed, arbitrary and illegal conduct of the hearings with deliberate defamatory pleadings still left in the record, all as heretofore pointed out, shows that the hearings before the committees of the Chicago Bar Association resembled a propaganda trial more than the sort of hearing required by due process of law under the Fourteenth Amendment. Further, as to these hearings in the Bar Association, it has been shown that petitioner was tried by his prosecutors in that members of the complaining committee subsequently appeared in the Committee on Grievances and the Board of Managers in the hearings before these latter two bodies.

What is worst of all, it appeared that members of the complaining committee, as well as members of these hearing bodies, the Committee on Grievances and Board of Managers, all were found to include present or former members of the Communist Party and fellow travelers of same. One does not need to ask how a known anti-communist, such as petitioner, could receive a fair hearing in such a case, where these hearing bodies were special commissioners of the Supreme Court of Illinois. In this connection petitioner's motion (Appendix pp. 27-43) to refer the Report of the hearing panel to a special commissioner, specifically pointing out the prejudicial character of these individuals in complaining committee, the Committee on Grievances and the Board of Managers and offering to prove same before a special commissioner, was stricken, on a motion to strike, filed by the General Counsel of the Chicago Bar Association. This motion to strike avoided denying any of the facts alleged in Petitioner's Motion. Instead the motion to strike was couched in the following words (Appendix p. 48) as a basis for the motion to strike:

> "It is respectfully submitted that the motion of the respondent (the instant petitioner) above described should be stricken from the files as scurrilous, scandalous and impertinent."

It is basic that nothing is impertinent which is relevant and in the case of petitioner's motion the matters charged were relevant to the issue of prejudice. Not only that such matters were true. It may also be said that on a motion to strike the matters charged in the pleading sought to be stricken are to be taken as true for the purposes of the motion. Hence when the Supreme Court of Illinois struck petitioner's motion, it must necessarily be said that it was willing to be influenced in its evaluation of the evidence by persons having the prejudices against petitioner as alleged in his motion. This can hardly be said to be a background for a fair evaluation of the evidence by the Supreme Court of Illinois and due process of law in such evaluation by said Court.

(4) In support of the *Fourth Question*, it can hardly be doubted that Congress in passing Sec. 487 R. S., 35 U. S. C. 11, reported in 35 U. S. C. A. 31, 32 and 33, heretofore referred to, intended that the federal government should exclusively occupy and dominate the field in respect to the practice pertaining to the registration of trade marks in the U. S. Patent Office. In fact, this Court has heretofore said in *Kingsland* v. *Garcia*, 338 U. S. 318, that Congress intended that the Commissioner of Patents should have sole jurisdiction in the regulation of these matters, including practice by attorneys before the Patent Office.

All of the letters referred to in the opinion (Appendix 8-10) pertain to practice before the United States Patent Office. Hence the action of the Supreme Court of Illinois in seeking to regulate practice in the United States Patent Office under the guise that "* * * Mida's Trade Mark Services, * * * was engaged in a business of a nature, which if handled by a lawyer, would be regarded as the practice of law," should be deemed not enforceable under the doctrine of:

Commonwealth of Pennsylvania v. *Steve Nelson*,

decided by the U. S. Supreme Court April 2, 1956, (not yet printed in official or U. S. Reporter System). In that case, this Court said:

> "As was said by Mr. Justice Holmes in *Charleston & Western Carolina R. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 604:
>
> 'When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.'
>
> Second, the federal statutes 'touch a field in which the federal interest is so dominant that the federal system (must) be assumed to preclude enforcement of state laws on the same subject.' *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. at 230, citing *Hines* v. *Davidowitz, supra.*"

REASONS RELIED UPON FOR ISSUANCE OF THE WRIT.

This case involves novel questions of fundamental importance, to not only the legal profession, but all the learned professions, and in fact the entire public of the United States.

1. One such question is whether the United States Supreme Court would take jurisdiction in a proper case of denial (or suspension) by a state court of the right to practice law and in a proper case reverse such denial (or suspension). In the case of *In re Summers*, 325 U. S. 561, this Court took jurisdiction of a case involving the denial of the right to practice law but found that such denial was not in derogation of the due process of law clause of the Fourteenth Amendment to the Constitution. In the instant case, involving pressures brought upon a state court by persons in a bar association within that state, in the guise of serving the interests of the legal profes-

sion, the courts and the public, but actually to serve private interests of lawyers, the interference of the Supreme Court of the United States is greatly needed in the public interest.

2. A second question is whether the United States Supreme Court will take jurisdiction in a case where a bar association group of lawyers, acting as ex officio commissioners of a state court, act in a high-handed and arbitrary manner in conducting hearings on charges made by members of the same group for their own private interest, and evaluate evidence adduced at such hearings in a biased manner so that the state court is necessarily influenced adversely by such biased evaluation and considers matters, done without interference for over half a century, as unethical and a basis for suspension, although the acts are neither immoral, illegal nor improper by ordinary professional standards. The urgency of this Court's intervention here is obvious.

3. A third question is whether the United States Supreme Court will take jurisdiction in a case such as outlined in (2) where the complaining members of the bar association group and the hearing members of the group both include members who have been or are Communist Party members and fellow travelers and the attorney complained of is a known anti-communist. The urgency of the Court's intervention here is of great public importance.

4. A fourth question is whether the Supreme Court should interfere to prevent a state court from seeking to regulate a practice, such as before the United States Patent Office, under the guise that such practice is the practice of law and within the police power of the state court when Congress has by statute made such practice solely a subject for federal regulation by the Commissioner of Patents. Issuance of the Writ in such a case is urgently required in the public interest.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

THEODORE W. MILLER,
209 S. LaSalle Street,
Chicago 4, Illinois,
Petitioner, pro se.

APPENDIX.

Opinion of Supreme Court of Illinois.

Docket No. 33668—Agenda 12—September, 1955.

In the Matter of Theodore W. Miller, An Attorney.

Mr. JUSTICE MAXWELL delivered the opinion of the court:

This is a disciplinary proceeding instituted before the Committee on Grievances of the Chicago Bar Association as commissioners of this court under Rule 59, against the respondent, Theodore W. Miller, an attorney. The action was commenced on March 4, 1952, by a complaint consisting of 17 counts filed with the commissioners by the Committee on Unauthorized Practice of the Chicago Bar Association, hereinafter called the committee, charging respondent with violations of certain sections of the Canons of Ethics of the legal profession arising out of the operation of a business known as Mida's Trade Mark Services.

On April 22, 1952, respondent filed a motion to make the complaint more definite and certain, in response to which the committee filed a bill of particulars. Respondent filed his answer June 5, and an amendment thereto on December 17, 1952. The committee's proofs commenced on June 19, 1952. Six hearings were had in 1952 and ten in 1953, the last being held on December 17.

The commissioners' report and recommendations found that respondent had violated sections 22, 27, 28, 29, 33, 35 and 47 of the Canons of Ethics of the American, Illinois, and Chicago Bar Associations. The respondent's objections were overruled and the Committee on Grievances and the Board of Managers of the Chicago Bar Association recommended that respondent be suspended from the practice of law for five years. By leave of court the respond-

ent's objections stand as exceptions and the entire record is here for review.

The record shows that respondent's grade and high school education was in Schenectady, New York. At the age of sixteen he joined the Navy and was appointed to the United States Naval Academy, from which he graduated in 1922, receiving a commission in the regular Navy. In 1924 he resigned to accept a civil service appointment as assistant examiner in the United States Patent Office. He served in that capacity for about one year and while in Washington commenced the study of law at George Washington University. He then came to Chicago and continued to study law under attorneys, taking an annual examination by the Board of Law Examiners for two years, after which he was admitted to practice in Illinois in 1927. He was with several law firms following admission, and in 1929 respondent started to practice for himself and has been doing so ever since. In 1930 he served about one year as an Assistant State's Attorney of Cook County. Respondent has from time to time maintained offices at various locations in Chicago. In July, 1950, he took a lease at 209 South La Salle Street in Chicago where his offices are presently located.

No other complaint against respondent has ever been made before a bar association or this court. Respondent is registered in the United States Patent Office as competent to carry on proceedings in patent matters. No complaint is shown to have been made against respondent in either the Patent or Trade Mark offices.

The evidence is voluminous. The report of the Committee on Grievances as commissioners calls the record "the heterogeneous mass of evidence." Two hundred and forty-four exhibits were introduced consisting of 621 separate documents. The material facts are substantially as follows:

In 1889 William Mida, as editor of a trade journal, commenced recording trade marks. In the course of years William Mida and his records became a source of information on trade mark matters. When the United States Patent Office began recording trade marks under the 1905 Trade Mark Law, Mida then had a backlog of twenty years of trade mark history. After the 1905 act, Mida kept and maintained a complete copy of the records of the trade mark registration in the patent office, systematized the records for ready reference; and upon request furnished an abstract of the records for established fees or charges.

Upon the death of William Mida in 1915 the business he had established and conducted as Mida's Trade Mark Services descended to his son, Lee W. Mida, who carried on until his death in 1949 when the business passed to Lucia G. Mida, his wife. It appears that the two Midas operated the trade mark services as a business in the city of Chicago from 1905 to 1949; and did so without any interference from the United States Patent Office or complaint from any bar association.

Both William Mida and Lee W. Mida, as laymen, were recognized by the patent office as competent persons to register trade marks. However, Mrs. Mida was not so recognized. She endeavored to conduct the business herself, and on March 1, 1950, Mrs. Mida engaged respondent to finish and conclude trade mark cases originally undertaken by Mida's Trade Mark Services then pending in the Trade Mark Office at Washington, D. C., and in the several States.

Respondent's initial association with Mida's Trade Mark Services began March 1, 1950. On that date an agreement was entered into between the respondent and Lucia G. Mida. The contract recited that Lucia G. Mida was the sole owner of Mida's Trade Mark Services; that she was

not an attorney and did not desire to continue operation of the business; that there were a number of pending applications before the United States Patent Office and the several States for trade mark registrations which were filed by Mida's Trade Mark Services; that Lucia G. Mida was "desirous of completing the work originally undertaken by the said Mida's Trade Mark Services and for which it is obligated, and also wishes to have Miller [respondent] complete the work necessary to process said applications provided the applicants consent that he do so;" and that "Miller is an attorney who is qualified to complete said applications and is willing to do so provided the applicants consent that he perform such services for them."

The agreement also sets forth that Lucia G. Mida agreed to deliver to respondent all the files, correspondence and other information related to such applications that were in possession of Mida's Trade Mark Service. Mida's customers had deposited with it moneys to pay costs and filing and registration fees. The contract between Lucia G. Mida and respondent recited that Mrs. Mida had paid to respondent the sum of $9,236.46, out of which respondent agreed to pay the sum of $4,673.41, which latter sum represented all unpaid filing and registration fees to the United States Patent Office.

Lists of the said pending applications which respondent had agreed to complete were attached to the contract as an exhibit. The contract also provided that in the event it was not possible for respondent to complete any of said applications "because the client does not consent to have Miller perform such services" any unpaid registration fees in such cases should be refunded to the applicant out of funds paid to respondent. Thereafter Lucia G. Mida contacted the several applicants and secured the required

power of attorney for respondent, permitting him to go forward with the processing of the pending applications.

Meanwhile and contemporaneous with the entering of the contract with respondent, Lucia G. Mida, as lessor, and Corliss W. Jones, a layman, as lessee, entered into an agreement whereby, for a stipulated rental for a period of five years, Jones was given the right to use the name "Mida" in connection with the trade mark business for the term of the lease, together with the Federal trade mark card index files, furniture, equipment and fixtures, digest library, books, records and correspondence files.

Thus, on March 1, 1950, Mida's Trade Mark services, as it had theretofore existed and functioned, was broken down into its two elements. The sale of the abstracts of its records based upon the search given the trade mark, the similar trade mark, the registration number, registration date, the registrant, the location, date of adoption and the goods covered was taken over as a business by Jones, a layman, while the completion of applications for registration of trade marks then left pending was taken over by respondent, a lawyer.

Respondent's activities after he entered into the contract with Mrs. Mida to complete the applications originally undertaken by Mida's Trade Mark Services consisted of applications, trade-mark oppositions, trade-mark interferences, proceedings and cancellation proceedings in the United States Patent Office. They involved the preparation and filing of briefs and appearance at the final hearing. In due time he completed the pending applications.

When respondent first entered into the contract with Lucia G. Mida, the office of Mida's Trade Mark Services was located at 537 South Dearborn Street in the city of Chicago. The record is not entirely clear as to when respondent moved to this address. Suffice to say, however,

that both Mida's Trade Mark Services and respondent had the same Dearborn Street address for some months prior to July, 1950.

In July, 1950, respondent removed to his present offices at 209 South La Salle Street. At the same time, Mida's Trade Mark Services moved to the same address. There is a double door to the offices. One door carries respondent's name as attorney and the other the name of "Mida's Trade Mark Services." Corliss W. Jones operated Mida's Trade Mark Services under his lease with Mrs. Mida until February 28, 1951, when he assigned the lease, with the consent of Mrs. Mida, to respondent who assumed the obligations of said lease as of that date. Jones then left Illinois and went into business in Indiana. From March 1, 1951, respondent has conducted the abstract business of Mida's Trade Mark Services, first under the lease and subsequently, upon the death of Mrs. Mida, as sole owner of said business.

The several paragraphs of the complaint made by the committee are phrased in general terms but the context of the pleading is to charge that respondent solicited law business on a large scale, using the trade name of "Mida's Trade Mark Services," improperly used the description of "general counsel," had solicitors actively soliciting business for him, and wrote to laymen, prospective clients, suggesting the filing of opposition proceedings in the United States Patent Office. The complaint of the Bar Association is not that respondent is practicing law but that under a guise of a trade mark search service he is actively soliciting and has obtained numerous clients for legal work. The exhibits attached to the complaint are lettered so as to refer to and support the same lettered paragraphs in the complaint. The exhibit of paragraph (a) is exhibit A and each paragraph and exhibit is so known.

The answer of respondent is that in the operation of the business known as Mida's Trade Mark Services he only received clients who gravitated to him because of his ownership of such business; and that such indirect accumulation of clients is not an exploitation of a business nor solicitation within the meaning of the Canons of Ethics, but only the normal acceleration of a lawyer's practice.

The defense of respondent is that a lawyer may own and operate a business alongside of his law practice, if he does not exploit the business with a motive to convert it into a medium of solicitation, thereby to manufacture clients for his law practice; that the operation of a reputable business by an active lawyer does not and cannot degrade the legal profession nor bring it into disrepute; that the province of this court is to control the conduct of the lawyer, not his business.

Respondent and the committee have raised several points, exceptions and objections in their respective briefs, some of which are not properly before this court and others not necessary to a decision in this case.

The charge in the complaint of the committee is, in substance, solicitation and exploitation of a business, those allegations are denied by the respondent, and that is the issue.

Hearings in disbarment proceedings are judicial and must be governed by the same rules as to competency and weight of evidence as are applied to other cases on questions of fact (*In re Mitgang*, 385 Ill. 311; *In re Needham*, 364 Ill. 65; *People ex rel. Chicago Bar Association* v. *Amos*, 246 Ill. 299.) In order to warrant disbarment or suspension, the case must be put to hearing on a definite theory. That theory the pleadings must outline, the evidence sustain, and the law support. The record must be free from doubt not only as to the act charged but also

as to the motive with which it is done. *In re Brummund*, 381 Ill. 139; *In re Greenberg*, 380 Ill. 417; *In re Hallmann*, 384 Ill. 325.

As a matter of convenience in considering the evidence, the activities of the respondent can well be divided into two periods: the first, under his contract with Lucia G. Mida, from March 1, 1950, to February 28, 1951; the second, after his purchase of Mida's Trade Mark Services from Jones on March 1, 1951.

The record is lacking of any substantial evidence of violation by respondent of Canons of Ethics prior to March 1, 1951. However, after respondent had purchased the trade name and good will from Lucia G. Mida he entered upon a course of conduct wholly inconsistent with the Canons of Ethics. In one instance he ordered 250 form letters, of which at least twenty were sent to customers on the letterhead of Mida's Trade Mark Services, Chicago, and signed by M. E. Ryan, a part of which reads as follows:

> "• • • As for our qualifications for such work, we wish to advise that all matters for our clients requiring a lawyer are handled by our general counsel, Theodore W. Miller, with the client's approval. Mr. Miller is a member of the bar, a former member of the Examining Corps of the U. S. Patent Office, and a patent and trade-mark lawyer of vast experience and fully qualified in trade-mark and patent matters both before the Patent Office and the Courts."

Such letters mentioning respondent's qualifications to handle work for Mida's clients were sent out from time to time, and one of the letters sent to clients appears as an exhibit attached to the complaint. This is a letter on the letterhead of Mida's Trade Mark Services, dated August 27, 1951, addressed to Millwork Supplies, Inc., Northfield, Illinois, and reads as follows:

> "Thank you for your letter of August 16th inquiring as to the necessary requirements for application for registration in the United States Patent Office.

"The preparation, filing and prosecution of application for registration of trade marks requires the attention of specially qualified counsel, and we suggest Theodore W. Miller, of this address, a registered patent attorney, and our general counsel, who is thoroughly familiar with and of long experience in these matters. Quotation from him for preparing and filing the application for registration of your trade mark 'Chef's Block' is $95.00, which includes the government filing fee, draftsman's charges for the patent office drawing and the ordinary and usual amendments and arguments in the course of the prosecution of said application.

"If you desire to have Mr. Miller handle your application for registration of the above-mentioned trade mark, kindly furnish details on the enclosed questionnaire. Seven specimens showing actual use of the mark on the goods are required."

On June 22, 1951, the following letter on the letterhead of respondent, signed by him, was addressed to Ace Engraving & Embossing Company of Chicago, reading as follows:

"As a client of Mida's Trade Mark Services, Chicago, you have been receiving advisory services as to pending applications to register trade marks similar to yours, and as I handled all legal matters for Mida's clients, I am directly informing you of an application pending in the United States Patent Office to register the mark 'Ace'.

"The application was filed by Anthony G. Rosa, Lyndhurst, New Jersey for the trade mark 'Ace' for fountain pens and pencils, claiming the use since January, 1950.

"According to the records of Mida's Trade Mark Services you own registration No. 264,508, dated November 26, 1929 for the notation "Ace Engraving & Embossing Co." and Airoplane design, for engraved stationery—namely, business cards, calling cards, wedding invitations and announcements, Christmas, New

Year and birthday greeting cards and business announcements of all kinds, adopted September 1923.

"If you are still using that trade mark and should you consider the above trade-mark 'Ace' to be an invasion of your brand claims, your formal objection thereto must be filed in the patent office by Thursday, July 12, 1951.

"In view of the close proximity of the time limit for filing your formal objections to the registration of the above trade mark, if you desire to have me institute such proceedings in your behalf, I should have your instructions at an early date."

Similar letters were sent by respondent, one dated August 17, 1951, addressed to Bell Company, Incorporated, of Chicago, and one dated August 17, 1951, and addressed to Steele-Wedeles Company of Chicago.

To cite further examples or to quote testimony from the record would be to unduly lengthen this opinion without resultant benefit. We think that respondent's actions were something more than "excusable conduct, necessarily resulting from individual interpretation of Canons, overzealousness, individuality, poor judgment, bad taste" as he describes them.

It was not necessarily improper for respondent to engage in the business of trade mark search service, furnishing search reports to customers consisting solely of factual data as to the use and registration of particular trade marks and informing customers of the use and registration of particular trade marks as indicated by public records and private informative directories; to conduct and maintain a service for the purpose of informing customers of the use and registration of names or marks similar to those of a customer. A business so conducted is not inconsistent with respondent's duties as a member of the bar.

The inconsistency arises in the instant case when respondent, as lessee and as sole owner in conducting the

trade mark search service in the name of Mida's Trade Mark Services passed upon the legal status of the search report, offered legal interpretation thereof, gave opinions upon the legal status or offered legal interpretation of similar names or marks and charged a fee for such services. The record does not support the argument of respondent that he has been practicing law within the limits of the Canons of Ethics, that Mida's Trade Mark Services was not engaged in the practice of law and the practice of law which respondent, as Theodore W. Miller, was engaged in was something entirely different, distinct and apart from the activities of Theodore W. Miller doing business as Mida's Trade Mark Services. On the contrary, the evidence is clear, cogent and convincing that Mida's Trade Mark Services, as conducted by respondent, was engaged in a business of a nature, which, if handled by a lawyer, would be regarded as the practice of law. From time to time Mida's Trade Mark Services suggested respondent to customers as an attorney well qualified in trade mark matters. In instances, respondent suggested himself to customers of Mida's Trade Mark Services as such an attorney. Thus it will be readily seen that Mida's Trade Mark Services, as carried on by respondent, lent itself as a means of procuring professional employment for him.

We have many times recognized that the disbarment of an attorney is the destruction of his professional life, his character and his livelihood. Likewise, the removal of an attorney from practice for a period of years entails the complete loss of clientele with its consequent uphill road of patient waiting to again establish himself in the eyes of the public, the courts and his fellow lawyers. However, the courts should not hesitate to inflict the penalty where the punishment is fully deserved. (*In re Donoghy*, 402 Ill. 120.) Some infractions of the Criminal Code are more serious than others and call for a much higher grade of pun-

ishment, and so it is with infractions of the Canons of Ethics. The offense of solicitation of business is not one which imports venality, criminality, fraudulent practices or moral turpitude. (*People ex rel. Chicago Bar Association* v. *McCallum*, 341 Ill. 578; *In re Veach*, 1 Ill. 2d 264.) Nevertheless its practice is inimical to the good reputation of the bar in general, is strictly prohibited and studiously to be avoided.

In view of the fact that we do not find respondent's conduct was "tainted with moral turpitude," as did the commissioners, and in view of the short period of time in which he engaged in the activities complained of, his age, long practice and hitherto unchallenged standing, we fix the period of his suspension from the practice of law at one year.

RESPONDENT SUSPENDED.

Judgment of Supreme Court of Illinois.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday the fourteenth day of November in the year of our Lord, one thousand nine hundred and fifty-five, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice,
Justice Joseph E. Daily,
Justice George W. Bristow,
Justice Ray I. Klingbiel,
Justice Walter V. Schaefer,
Justice Ralph L. Maxwell,
Justice Charles H. Davis.
Latham Castle, Attorney General.
Robert G. Miley, Marshal.
Attest: Fae I. Searcy, Clerk Pro Tempore.

Be it remembered, that, to-wit: on the 23rd day of November, A.D. 1955, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re:
No. 33668
Theodore W. Miller,
an attorney. } Information

And now, on this day, the Court having duly considered the Report of Commissioners, and exceptions thereto, together with the briefs filed herein, and being fully advised in the premises;

It is hereby ordered that respondent, Theodore W. Miller, be suspended from the practice of law in the State of Illinois for a period of one year.

Denial of Petition for Rehearing.

UNITED STATES OF AMERICA.

State of Illinois, } ss.
Supreme Court. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday the ninth day of January in the year of our Lord, one thousand nine hundred and fifty-six, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice,
Justice Joseph E. Daily,
Justice George W. Bristow,
Justice Ray I. Klingbiel,
Justice Walter V. Schaefer,
Justice Ralph L. Maxwell,
Justice Charles H. Davis.
Latham Castle, Attorney General.
Robert G. Miley, Marshal.
Attest: Fae I. Searcy, Clerk Pro Tempore.

Be it remembered, that, to-wit: on the 16th day of January, A.D. 1956, the same being one of the days of the Term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

In re:
No. 33668
Theodore W. Miller,
an attorney. } Information

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

Complainant's Exhibit X-1 from page 51 of Report.

• • • • •

106. It was admitted by respondent that he prepared Complainant's Exhibit X-1, a photostatic copy of letter attached to a petition for a subpoena *duces tecum* filed by the complainant October 23, 1952. The exhibit is on the letterhead of Mida's Trade Mark Services, in Chicago, addressed to the Perk Foods Company of Chicago, signed "Mida's Trade Mark Services, by M. E. Ryan." It reads as follows:

"GENTLEMEN:

"It has come to our attention that a disgruntled former employee of Mida's Trade Mark Services, by the name of James Valentine, is soliciting clients of Mida's by representing himself as the only surviving member of the firm of Mida, Valentine & Richards which handled one of their (the client's) registrations. Please be advised that the firm referred to was acting for Mida's clients at that time in matters before the Patent Office. The firm always included a member of the bar and thus was recognized in such matters.

"Mr. Valentine himself being no lawyer is not entitled to practice trade-mark law either generally, in the courts, or even before the Patent Office in the view of the Illinois Courts. His separation from Mida's Trade Mark Services was strictly in the best interests of the latter in view of the fact that he has been found lacking in the high standard of character and integrity required of its employees by the present management of Mida's Trade Mark Services. Should you receive any letters from him soliciting business pertaining to the preparation and filing of applications for registration or renewals of same, we would greatly appreciate your sending such letter to us to be turned over to the Chicago Bar Association.

"As for our qualifications for such work, we wish to advise that all matters for our clients requiring a lawyer are handled by our general counsel, Theodore

W. Miller, with the client's approval. Mr. Miller is a member of the bar, a former member of the Examining Corps of the U. S. Patent Office, and a patent and trade-mark lawyer of vast experience and fully qualified in trade-mark and patent matters both before the Patent Office and the courts.

"With kindest regards and best wishes."

* * * * *

107. (Witness, continuing) That was the only letter used to combat Valentine's tactics. The body of the letter was mimeographed. More than twenty were prepared, but we did not use the full amount we ordered. I believe about two hundred and fifty were ordered. We may still have the surplus in the files.

Respondent's Exhibit 4 of June 4, 1953, from pages 142-143 of Report.

398. Respondent's Exhibit 4 of June 4, 1953, is a certified copy of the trade-mark "Perk" filed in the office of the Secretary of State of the State of Illinois on July 6, 1939, by Lee W. Mida attorney for Ready Foods Company, Inc. The power of attorney filed by Ready Foods Company, Inc., by its president on June 30, 1939, appoints Lee W. Mida its attorney to make application for registration of trade-mark "Perk" in the following states: Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Pennsylvania, and Wisconsin. The application for registration of trade-mark in the State of Illinois is dated June 5, 1939, and is signed by Ready Foods Company, Inc. by Lee W. Mida, its attorney.

Respondent's Exhibit 8 of June 4, 1953, from Paragraph 402 of Report.

402. Respondent's Exhibit 8 of June 4, 1953, is a certified copy of a power of attorney filed September 27, 1937, in the United States Patent Office in the matter of the

trade-mark registered to Ready Foods Company, Inc. The power of attorney, dated August 27, 1937, is signed by Ready Foods Company, Inc. by its president, and appoints Mida, Richards and Murray attorneys to prosecute the application for registration.

From Report pages 137 and 138, Paragraphs 377 and 378.

377. Respondent's Exhibit M, received for the limited purpose of showing that a general counsel is indicated upon it, is a certified copy of a Statement, Declaration and Drawing filed March 13, 1919, in the United States Patent Office in the matter of a trade-mark of Booth Fisheries Co. The petition and power of attorney addressed to the Commissioner of Patents sets forth in a printed form that the Booth Fisheries Co. appoints Arthur E. Wallace, general counsel of Mida's Trade Mark Bureau, their attorney to prosecute the application.

378. Respondent's Exhibit L is a certified copy of a Statement, Declaration and Drawing filed in the United States Patent Office September 19, 1918, in the matter of a trade-mark of the Lubec Sardine Co. The first document, the petition and power of attorney, is a printed form in which the petitioner appoints Arthur E. Wallace, general counsel of Mida's Trade Mark Bureau, its attorney to prosecute the application. The application for republication under the Trade-Mark Act of 1946, which is part of the exhibit, was executed November 24, 1947, by C. A. Linder, Vice-President of Booth Fisheries Corporation. This application appoints Wilkinson, Huxley, Byron and Hume attorneys for the corporation to prosecute the application for republication.

From Additional Abstract, pages 70 and 71, Paragraph 40.

40. Respondent objects to the finding in par. 548, pp. 190-191 of the Report, because this finding fails to include what is fairly pertinent to this situation and that is that Williamson Candy Co., as shown on the face of the letter referred to, was a client of Mida's Trade Mark Services in respect to the particular registrations referred to in said letter and the Report, if it were fair, would also find in accordance with the evidence (Respondent's Exhibit 5 of May 7, 1953, Report 119 and Respondent's Exhibits J, M and L) that the clients of Mida's Trade Mark Services were accustomed to dealing with the general counsel of Mida's Trade Mark Services and that such client was not solicited but was being informed in accordance with existing vigilance obligations (Report p. 30, par. 27 and p. 38, par. 57) on the part of respondent's predecessors in practice who obtained those registrations and had those obligations. The client was not being misled to its detriment but was receiving the benefit of those vigilance obligations which complainants would have respondent disregard to the clients' detriment. In that respect it is the complainants who would do injury to the public and the regard of the public for the legal profession and it is the respondent who would uphold that regard. Even Valentine's testimony concedes that the clients of Mida's were accustomed to deal with counsel of Mida's even though he attempted to conceal the fact that they actually dealt with a "general counsel". See his testimony (Tr. 40-42):

"Q. Who was the counsel during the term of your employment by Mida's Trade Mark Services?

A. Arthur E. Wallace, Brazton G. Richards, Alexander W. Murray and John B. Hosty.

Q. How did the client get into contact with this counsel of Mida's that you mentioned?

A. Well, the letter in response to the letter written by Mida's regarding the conflict would be turned over

to the counsel and he would address the client in response.

Q. How long was that custom followed by Mida's Trade Mark Services and its counsel?

A. For the entire term of my employment."

Complainant's Exhibit F-2 from page 11, Paragraph 17 of Report.

17. Exhibit F-2 is a letter on the letterhead of respondent, dated August 17, 1951, addressed to the Bell Company, Incorporated, of Chicago, signed by respondent, reading as follows:

"GENTLEMEN:

"As a client of Mida's Trade Mark Services, Chicago, you have been reeciving advisory service as to pending applications to register trade-marks similar to yours, and as I handle all legal matters for Mida's clients, I am directly informing you of an application pending in the United States Patent Office to register the mark "FLAIR".

"The application was filed by The Muralo Company, Inc., New Brighton and Staten Island, New York, for the trade-mark "FLAIR" for latex base paint, claiming use since August 3, 1950.

"According to the records of Mida's Trade Mark Services you have registration No. 362,615 dated November 22, 1938, for the trade-mark "FLAIR" for glass shellac, paint and varnish remover, liquid automobile polish and cleaner, and similar items, adopted April 14, 1938.

"Should you consider the above trade-mark "FLAIR" to be an invasion of your brand claims, your formal objections thereto must be filed in the Patent Office by *Thursday, September 6, 1951.*

"In view of the close proximity of the time limit for filing your formal objections to the registration of the above trade-mark, if you desire to have me institute such proceedings in your behalf, I should have your instructions at an early date."

Complainant's Exhibit F-3 from Paragraph 18, page 12, of Report.

18. Exhibit F-3 is a photostatic copy of a letter on the letterhead of respondent, dated August 17, 1951, addressed to the Steele-Wedeles Company, of Chicago, signed by respondent, reading as follows:

"GENTLEMEN:

"As a client of Mida's Trade Mark Services, Chicago, you have been receiving advisory service as to pending applications to register trade-marks similar to yours, and as I handle all legal matters for Mida's clients, I am directly informing you of an application pending in the United States Patent Office to register the mark "SAVIO".

"The application was filed by Wood Canning Company, Stockton, California, for the trade-mark "SAVIO" for canned tomato paste, claiming use since December 13, 1949.

"According to the records of Mida's Trade Mark Services you have been using the trade-mark "SAVIO" on various food items, since 1894, and had that mark registered on February 15, 1916, registration No. 108,623, as well as having registered that mark in all States except Wisconsin.

"Should you consider the above trade-mark "SAVIO" to be an invasion of your brand claims, your formal objections thereto must be filed in the Patent Office by *Thursday, September 6, 1951.*

"In view of the close proximity of the time limit for filing your formal objections to the registration of the above trade-mark, if you desire to have me institute such proceedings in your behalf, I should have your instructions at an early date."

Respondent's Exhibit 6 of June 4, 1953, from page 143, Paragraph 400 of Report.

400. Respondent's Exhibit 6 of June 4, 1953, is a certified copy of a power of attorney filed in the United States Patent Office May 23, 1929, in the matter of the trade-mark registration to Ace Engraving and Embossing Company. The power of attorney, dated April 25, 1929, is signed by Ace Engraving and Embossing Company, by a member of the firm, and appoints Mida, Valentine and Jones attorneys to prosecute the application for registration.

Respondent's Exhibit 3 of June 4, 1953, from Paragraph 397, page 142 of Report.

397. Respondent's Exhibit 3 of June 4, 1953, is a certified copy of a power of attorney filed in the United States Patent Office July 1, 1938, in the matter of the trade-mark registered to the Bell Company, Incorporated. The certified document entitled "Petition and Statement" is dated June 24, 1938, and signed by the Bell Company, Incorporated, by its vice-president. It appoints Mida, Richards and Murray its attorneys to prosecute the application for registration.

Respondent's Exhibit 7 of June 4, 1953, from Paragraph 401, page 143 of Report.

401. Respondent's Exhibit 7 of June 4, 1953, is a certified copy of power of attorney and acknowledgment of power of attorney filed in the United States Patent Office in the matter of the abandoned application of Steele-Wedeles Company. The power of attorney, signed by Steele-Wedeles Company by its treasurer, dated March 8, 1950, revokes all former powers of attorney and appoints respondent its attorney to prosecute the appli-

cation for registration. The acknowledgment of the power of attorney on the letterhead of the United States Patent Office is dated May 17, 1950, is addressed to respondent, and advises that his power of attorney had been accepted and that power of attorney to James S. Valentine is revoked.

Testimony of Complainant's Witness Gerrit Groen from Report, Paragraphs 169-174 and Paragraphs 179 and 180.

169. When you ask whether Exhibits C-1, C-2, C-3, C-5, and D-1, attached to the complaint, were submitted by me to the Committee on Unauthorized Practice as a basis for a complaint against Mida's, my answer is, I collected the material, wrote a report on it and submitted it to the Committee. They purport to show that they are in response to inquiries, but I did not pursue that. Exhibit F-1, attached to the complaint, was submitted to the Committee by me. I received it from Valentine. I did not ask him who the Ace Engraving and Embossing Company were or whether they were a client of Mida's. The purport of that exhibit is information to a client that a published mark appears to be similar to theirs and when they have to oppose it. I notify some of my clients when a mark is published that looks similar to one of theirs and some clients follow that themselves. I do that for Booth Fisheries and the Rilling Company, but not for Ditto.

170. When you ask me if I am a trade-mark attorney, my answer is, I am a member of the Bar of Illinois and various other courts in the country and specialize in trade-marks, patents and copyrights. I handle many trade-mark matters for my firm, probably the bulk of them, but not all. I consider that I specialize in trade-mark matters. I do not know whether Allen, one of counsel for complainant, is a trade-mark specialist. To my

knowledge Prangley, one of counsel for complainant, specializes in patents and trade-marks.

171. When you ask if it is standard practice for a trade-mark attorney to notify his clients when a mark is published in the Gazette, which is the same or similar to his client's, my answer is, many trade-mark lawyers would do that when they have active clients they represent from year to year, where they want that service. There are also laymen who specialize in following the Gazette to see what is published and registered, and who write organizations, whether they have anything to do with them or not. When you ask me again if it is standard practice for trade-mark attorneys to write their clients when there is a similar mark published in the Gazette, my answer is, many do when their clients ask for that service. I know clients who do not want the service.

172. I do not do that for the Admiral Corporation. They have other attorneys who prosecute trade-mark applications. I was present when depositions were taken from witnesses from the Admiral Corporation. I do not recall that respondent asked an official of that corporation whether he got that service from attorneys and that he answered yes. My representation is not on that level.

173. I received Exhibit F-2, attached to the complaint, from Valentine. I do not know whether the Bell Company is a client of respondent's or whether they were on August 17, 1951. I do not know whether it was a client of Mida's. When you ask me whether I send letters like that to my clients, my answer is, I do not write letters like respondent. I write letters to clients if the service we maintain for them shows that a trade-mark is being registered similar to one of their own, when they request that service. I tell my clients it is advisable to file an opposition.

174. When you show me Exhibit F-3, attached to the complaint, and ask if I know whether Steele-Wedeles was

a client of respondent's, my answer is, I do not. I do not know whether they were a client of Mida's when the letter went out. I did not ask Wallace, to my recollection, whether Steele-Wedeles, Bell Company, or Ace Engraving and Embossing Company were respondent's clients.

179. Exhibit J, attached to the complaint, is a copy of a letter sent to me by Valentine through the mail. I did not feel it necessary to discuss it with Valentine. I assumed it was a bona fide letter and don't recall whether I asked him if it was. When you ask me if I asked Valentine if he had reason to know whether it was written by respondent, my answer is, the letters were sent to me over a period of months. I put them in a file and did not study each one when I got it, or discuss it. When I was ready to make the report I took the material out and put it in order.

180. I never talked to Lorraine Comer. I don't know whether Exhibit K, attached to the complaint, was manufactured. When you ask if I investigated the authenticity of the letter when I received it, my answer is, I didn't investigate any of this material turned over to me by Valentine.

From Pages 56 and 57 (Par. 125) of Report.

Testimony of Complainant's Witness Axel Hofgren.

Cross-Examination.

125. I notify my client when I find a mark in the Gazette which looks similar to theirs. Whether I recommend filing an opposition depends upon the case and whether they ask for a recommendation. When I write a client and tell him that a mark similar to theirs has been published, I tell them how soon they have to file their opposition. When you ask if I recommend that they file an opposition, my answer is, it depends on how we represent the client. We might, if

we have a retainer and if we handle all work and have responsibility for it. I think it is general practice among trade-mark lawyers to advise their clients when they see a trade-mark published in the Gazette. I do that for Brunswick-Balke-Collender Company. They are my clients.

Paragrauhs 555 to 560 of Report of Div. IVa of Grievance Committee.

New Par. 555. This Court has condemned the solicitation of business. Canon 27 of the Canons of the American, Illinois and Chicago Bar Association meticulously proclaims the reprehensibility of solicitation, direct or indirect. Canon 28 denounces the stirring up of litigation, directly or through agents. Canon 33 proscribes the use of a false, misleading, assumed or trade name. Canon 35 condemns the employment of an intermediary whereby professional services of a lawyer are exploited by a lay agency intervening between the attorney and the client. Canon 47 condemns the aiding of the unauthorized practice of law.

New Par. 556. The record shows that when respondent became associated with Mrs. Lucia G. Mida, he violated Canons 47 and 35, that by employing lay agents to solicit law business, by using a trade name, and by falsely representing himself as general counsel of "Mida's", an expression used by him for a trade name and representing no entity or existence other than the respondent, the respondent has violated Canon 33 and Canon 27. By writing to persons who are not clients and suggesting the filing of opposition proceedings in the Patent Office, respondent has violated Canon 28 which prohibits the stirring up of litigation.

New Par. 557. Canon 22, which declares that a lawyer's conduct should partake of candor and fairness, and Canon

29, to the effect that it is a lawyer's duty to uphold the honor of the profession, have likewise been violated by the respondent.

New Par. 558. The respondent has contended that he is entitled to continue these practices and that they do not consist of anything illegal or unethical. The record here is not trivial. It indicates activities which resulted in the respondent procuring hundreds of clients in the practice of law in trade mark matters by unethical means, whereas in all the years prior to the time he had associated himself with Mrs. Mida, he had represented only ten.

New Par. 559. Respondent's conduct has been unprofessional and dishonorable, is tainted with moral turpitude and tends to bring the courts and the legal profession into disrepute and contempt.

RECOMMENDATIONS OF THE COMMITTEE ON GRIEVANCES AS COMMISSIONERS.

New Par. 560. The Commissioners find that the respondent's conduct tends to defeat the administration of justice and to bring the courts and the legal profession into disrepute. The Commissioners recommend that the respondent be suspended from the practice of law for a period of five years.

DIVISION IV-a, COMMITTEE ON GRIEVANCES OF THE CHICAGO BAR ASSOCIATION, COMMISSIONERS OF THE SUPREME COURT OF ILLINOIS,

By LAWRENCE L. O'CONNOR,
Chairman.

From page 2 of Transcript.

IN THE SUPREME COURT OF ILLINOIS.

In the Matter of
Theodore W. Miller,
an attorney. } Commissioners
No. 1149.

MOTION TO REFER REPORT OF DIVISION IV OF GRIEVANCE COMMITTEE OF CHICAGO BAR ASSOCIATION AND OBJECTIONS THERETO TO SPECIAL COMMISSIONER IN ACCORDANCE WITH ATTACHED PETITION THEREFOR AND FOR RULE TO ANSWER SAID PETITION.

To the Honorable, the Justices of the Supreme Court of Illinois:

1. Your petitioner, Theodore W. Miller, *pro se,* moves this Honorable Court to refer the report of Division IV of the Grievance Committee of the Chicago Bar Association and his objections to such report to a special commissioner for hearing in accordance with the attached petition showing prejudice on the part of newly appointed members of the Committee on Grievances and newly elected members of the Board of Managers and officers and showing prejudice not previously known by petitioner on the part of certain members of said Committee on Grievances and Board and certain members of said Division IV of said Committee on Grievances, and

2. Your petitioner further moves this Honorable Court to enter a rule on said Committee on Grievances and Board of Managers and the said Unauthorized Practice Committee to answer said petition.

3. Your petitioner further moves that such further pro-

ceeding be had on said petition, report and objections as may appear just and proper after such hearing or hearings.

4. Copies of this motion and petition have been furnished counsel for the complainant, Unauthorized Practice Committee, the Secretary of the Committee on Grievances, and the General Counsel of the Chicago Bar Association.

5. Petitioner requests that this motion be set down for oral argument.

THEODORE W. MILLER,
Pro Se.

PETITION TO REFER REPORT OF DIVISION IV OF GRIEVANCE COMMITTEE OF CHICAGO BAR ASSOCIATION AND OBJECTIONS THERETO TO SPECIAL COMMISSIONER.

I.

Theodore W. Miller, petitioner, as his first basis for reference of the report of Division IV of the Grievance Committee of the Chicago Bar Association and his objections thereto to a special commissioner, says:

1. He is a member of the bar of the State of Illinois against whom a complaint was filed by the Unauthorized Practice Committee of the Chicago Bar Association before the Committee on Grievances and Board of Managers of said Association acting as Commissioners of this Court under Rule 59 of this Court. The said Commissioners referred the matter to Division IV of the said Grievance Committee and certain proceedings were had thereafter, pursuant to which said Division rendered a report detrimental to petitioner and to which your petitioner has filed objections, and a hearing on said report and objections thereto has been set for January 12, 1955, before the full Committee on Grievances and Board of Managers as Commissioners of this Court.

2. The complaint referred to arose out of two written agreements of petitioner with a non-lawyer, one Lucia Mida, owner of Mida's Trade Mark Services, an old and nationwide trade mark service agency existing since before the turn of the century, the first of said agreements providing that petitioner carry out the unfinished obligations of said Lucia Mida in respect to her clientele, and the second agreement a year later providing for petitioner's acquiring the assets of the business of Mida's Trade Mark Services. These agreements were made to enable said Lucia Mida to withdraw from the trade mark business, which included making trade mark search reports and registering trade marks, since she was not a lawyer and the Unauthorized Practice Committee had her under investigation on the theory that practice before the Patent Office constituted the practice of law.

The business involved an extensive library of trade mark records pertaining to use and/or registration of trade marks so classified and indexed as to provide for making search reports covering marks similar to any selected mark searched for use on any sort of goods or services. The business also involved registering trade marks in the Patent Office, in the individual states and in foreign countries. As a part of the registration service and also by separate service agreements Mida's Trade Mark Services gave *vigilance service* involving, among other things, reporting to the client (called "customer" in the Report and Complaint apparently on the theory that only lawyers can have clients) when another was attempting to register a similar mark in the Patent Office and giving the client an opportunity to oppose such registration.

In thus acquiring the clientele of Lucia Mida and the business of Mida's Trade Mark Services; in thereafter integrating himself into what has been called the "practice of law" (Practice before the Patent Office being deemed

to be practice of law in the Complaint and Report) phase of that business by frequently referring to himself in dealing with the Mida clientele as "general counsel" of Mida's in accordance with the custom of Mida's in the past, although he was then the owner of Mida's; in continuing the trade mark research end of that business while still practicing law; in carrying out the vigilance obligations referred to of his predecessor by notifying clients of his predecessor's for whom Mida's had obtained trade mark registrations about similar marks sought to be registered by others and notifying clients of things necessary to the preservation of the validity of said clients' trade mark registrations; and in the manner of compensating two remaining representatives of Mida's whom he has still retained, your petitioner has been charged in said complaint and report with unethical conduct.

3. It developed during the proceedings on said complaint before said Division IV of the Committee on Grievances that a certain member (one Gerrit Groen) of the complaining committee (Unauthorized Practice Committee) had been the prime mover in an investigation against Mida's Trade Mark Services commenced originally in the name of the Unauthorized Practice Committee against Lee W. Mida, then Lucia Mida, and each successor down to your petitioner, and that said Gerrit Groen initiated the complaint in the name of the Unauthorized Practice Committee against your petitioner, and that substantially all of the documents upon which the complaint was based were received by said Groen from one James S. Valentine, a former manager of Mida's Trade Mark Services who was not retained by your petitioner after the latter acquired said Mida's Services.

It further developed in those proceedings before said Division that said Gerrit Groen was a partner of the firm of Wilkinson, Huxley, Byron and Hume and that said

firm had acquired as clients for trade mark work (as distinguished from Patent work) several large and important former Mida clients after or about the time that said Gerrit Groen commenced his activities against Mida's as a member of the complaining committee (the Unauthorized Practice Committee of the Chicago Bar Association).

In the course of the proceedings on said complaint before Division IV of the Committee on Grievances and before or about the time of the filing by said Division of the adverse report against respondent, one James P. Hume, a law partner of said Groen and member of said firm of Wilkinson, Huxley, Byron and Hume, which has been a beneficiary of said investigation of Mida's Trade Mark Services by acquisition of its clients as aforesaid, was appointed on the Committee on Grievances of said association, and unless this petition for reference of the said report of Division IV and petitioner's objections thereto is granted, said Hume may sit with said Committee on Grievances as a commissioner in hearing petitioner's objections to said report, and in any event petitioner fears that said Hume has already prejudiced said Committee on Grievances against petitioner.

4. Two recently appointed members of the Committee on Grievances, William C. Knecht and Ralph B. Mack, appointed to said Committee on Grievances since the hearings on said complaint commenced, were members of the Complainant Committee at the time of the filing of the complaint against petitioner, and unless this petition is granted they may sit as Commissioners at the hearing on the said report and objections thereto, and in any event your petitioner fears that they have already prejudiced the rest of the Commissioners against him.

5. Two other recently elected members of the Board of Managers, Stanford Clinton and Wills D. Nance,

elected members of the said Board of Managers since said hearing on said complaint commenced, and two others, Elmer Holmgren and Ralph B. Mack, recently appointed members of said Committee on Grievances, all of these four were members of the Complainant Committee during some period (It has been stipulated that the records of the Chicago Bar Association show that the Unauthorized Practice Committee of The Chicago Bar Association had the operations of Mida's Trade Mark Services as conducted by Lee W. Mida under investigation in 1937, 1943 and 1946, but that no proceedings of any kind were instituted in any court or before any board, commission or other legal tribunal as a result of these investigations; and that the present proceeding resulted from an investigation of said Lee W. Mida referred to on pages 95, 282, 300, 383 and 797-798 of the transcript which was commenced by the members of the present Unauthorized Practice Committee in 1949) when said Complainant Committee was investigating Mida's Trade Mark Services under some predecessor of your petitioner, and unless this petition is granted they may sit as Commissioners at the hearing on the said report and objections thereto, and in any event your petitioner fears that they have already prejudiced the rest of the Commissioners against him.

6. Charles Leviton, general counsel, and *ex-officio* member of the Board of Managers of said Association, is a law partner of Jerome H. Leviton. Said Jerome H. Leviton was a member of the Complaining Committee (Unauthorized Practice Committee) at the time of the filing of the complaint against respondent and continues as such member throughout these proceedings, and said Jerome H. Leviton was such member of the Complainant Committee during all the previous investigations above referred to by the Complaining Committee against predecessors of petitioner, and unless this petition is granted, said Charles

Leviton may sit as a commissioner at said hearing on said report and objections thereto, and in any event petitioner feels that said Charles Leviton may have already prejudiced the rest of the Commissioners against him.

7. The objections to the report which are set for hearing by the Committee on Grievances plus the Board of Managers as Commissioners include an objection (Par. 45 (b), pp. 60-63 of the Objections) that, for reasons given in said objection, the hearing before Division IV of said Committee was unfair to petitioner. The members of Division IV of the Committee on Grievances whose hearing has been thus claimed to be unfair have been held over as special members of the present Committee on Grievances so that unless this petition is granted the members of Division IV of the Committee on Grievances, which heard the complaint and made the report, will sit in judgment upon the question raised as to the fairness of their own acts and the claim that they have been unfair and their presence as Commissioners at said hearing will be prejudicial to petitioner.

II.

And for his second basis for reference of the said report and his objections thereto to a special commissioner, your petitioner says:

1. He realleges all of the paragraphs 1 to 7, inclusive, of his first basis for such reference as if such paragraphs were set forth in full.

2. He has been active in opposition to the Communist Offensive in this country, and upon information and belief asserts that his activities in that regard have become known to the Communist party and its members and the latter, as well as all those within the orbit of the communist movement and its influence are extremely hostile to petitioner.

3. He asserts, upon information received by him subsequent to the filing of the report of Division IV of the Grievance Committee and his belief resulting from such information that the membership of both the Complaining Committee (Unauthorized Practice Committee of the Chicago Bar Association) and the Committee on Grievances and the Board of Managers (including officers) of the Chicago Bar Association who act as Commissioners of the Supreme Court are infiltrated with persons who are present or former members of the Communist Party, persons who are present or former members of Communist front organizations and fellow travelers in that:

(a) A member of the Unauthorized Practice Committee at the time of filing of the complaint against petitioner, by the name of Elmer Gertz, has been on the faculty of the Abraham Lincoln School which was cited by the Attorney General of the United States, Tom Clark, in a letter to the Federal Loyalty Review Board, released December 4, 1947, as an adjunct to the Communist Party. Said Elmer Gertz was mid-west sponsor of the Spanish Refugee Appeal of Joint Anti-Fascist Refugee Committee which was cited by said Attorney General Tom Clark in letters to the said Loyalty Review Board on December 4, 1947 and September 21, 1948 as a mere front for the Communist Party, and said Elmer Gertz is a past president of the Chicago Chapter of the National Lawyers' Guild and a past vice-president and member of the executive board of the National Lawyers' Guild which was cited by the House Committee as a Communist Front in 1944 (see Special Committee on Un-American Activities Report of March 29, 1944, p. 149). Upon information and belief, your petitioner asserts that said Elmer Gertz is a leading member or has been a leading member of the Communist Party.

(b) A second member of the Unauthorized Practice Committee, at the time of filing complaint against peti-

tioner, by the name of John Ligtenberg, has also been a member of the faculty of the Abraham Lincoln School which was cited by the Attorney General of the United States as an adjunct of the Communist Party. Said Ligtenberg is also a past president of the Chicago Chapter of the National Lawyers' Guild, cited by the Special House Committee of the House of Representatives of the United States Congress as a Communist Front Organization. Upon information and belief petitioner asserts that said John Ligtenberg now is or has been a leading member of the Communist Party.

(c) A third member of the Unauthorized Practice Committee, at the time of the filing of the complaint against petitioner, by the name of Julius Fishman, upon information and belief was a member of the International Workers Order from 1946 through 1952. Said International Workers Order, upon information and belief, was cited by the Attorney General of the United States before the Subversive Activities Control Board as a Communist Front Organization, and a finding was made by said Board that said organization was an adjunct of the Communist Party, and it has gone underground. Upon information and belief, petitioner asserts: That said Julius Fishman is the same Julius Fishman who represented the officers of said International Workers Order in litigation with the Insurance Commissioner of the State of New York to retain the legal status of said Order as the insurance arm of the Communist Party; and that said Julius Fishman was active in membership drives of said Order before its outward dissolution; and that said Julius Fishman is a leading member of the Communist Party.

(d) A fourth member of the Committee on Unauthorized Practice at the time of the filing of the complaint against petitioner by the name of Jerome H. Leviton (also a law partner of Charles Leviton, General Counsel of the

Chicago Bar Association) on information and belief was in charge of the Progressive Party membership campaign for 1948 and 1950 for Cook County, Illinois, in close cooperation with known leaders of the Communist Party, Pearl Hart, Theresa Ehrlich, Max Naiman and Robert J. Gorman, all members of the Bar of the State of Illinois. Said Progressive Party, upon information and belief, was then and is now the political arm of the Communist conspiracy in the State of Illinois and openly and avowedly supported such communist candidates as Pearl Hart, Vincent Hallinan and Charlotta Bass, known members of the Communist Party.

(e) A fifth member of the Unauthorized Practice Committee at the time of the filing of the complaint against petitioner, by the name of Charles A. Getto, upon information and belief, was Chairman of the 39th Ward (City of Chicago) Unit of the Progressive Party during said campaigns, working in close cooperation with the said Max Naiman, who was Ward Organizer, and upon information and belief, petitioner asserts that Charles A. Getto is now or was a member of the Communist Party, and continues to be sympathetic with the Communist movement and its purposes.

(f) A sixth member of the Unauthorized Practice Committee, at the time of the filing of the complaint against petitioner, Gerrit P. Groen (the same Gerrit P. Groen previously referred to as the prime mover in the complaint against respondent), upon information and belief, is closely associated with the Progressive Party aforesaid, and is closely associated in said Progressive Party with the aforesaid Robert J. Gorman, a member or former member of the Communist Party. Said Robert J. Gorman, on information and belief, is Chairman of the 6th Ward Unit of the said Progressive Party, and is also a member of the Hyde Park Branch of the Communist Party which meets

at 5200 South Kimbark avenue, in the City of Chicago, Illinois.

(g) A seventh member of the Unauthorized Practice Committee, at the time of the filing of the complaint against petitioner, by the name of Bernard F. Martin, has been an active member of the Progressive Party, Hyde Park Branch, since August 16, 1946. Upon information and belief, said Bernard F. Martin is closely associated with one Harry R. Booth, another member of the Bar, in and as co-attorneys for the Utility Users League, Incorporated, which is a project used by the Local Communist Party to embarrass utilities in this area by pretending to champion the interests of consumers, which said League is a front for the Communist Party. Said Harry R. Booth, upon information and belief, has long been active in Communist Party affairs.

(h) An eighth member of the Committee on Unauthorized Practice, at the time of the filing of the complaint against petitioner, by the name of Joseph G. Hagstrom, upon information and belief, from January 1946 to 1950 has been active in the local branch of said Progressive Party and has functioned as Secretary of the 48th Ward (City of Chicago) Unit of said party, which party, as stated above, is and has been the political arm of the Communist Party openly and avowedly supporting Communist candidates for public office.

(i) A ninth member of the Committee on Unauthorized Practice of the Chicago Bar Association, at the time of the filing of the complaint against petitioner, by the name of John Rex Allen (who is the attorney of the Complaining Committee against respondent), is Chairman of the Political Action and Planning Committee of the Deerfield Township (Cook County) Voters Association, and as such has worked in close cooperation with another officer of that committee by the name of Elizabeth Bredin, who upon

information and belief is known to be a member of the Communist Party.

(j) A tenth member of the Unauthorized Practice Committee at the time of the filing of the complaint against petitioner, by the name of Davis P. Buzane, on information and belief, was attorney for Local 194 of the Distributive, Processing and Office Workers of America Union, formerly affiliated with the Congress for Industrial Organization. Upon information and belief this Local was ousted from the Congress for Industrial Organization on November 5, 1949, upon charges of being communist controlled, and after having removed certain of its officials, including said Davis P. Buzane, as attorney, was later re-admitted to the Congress of Industrial Organization.

(k) The first Vice-President of the Chicago Bar Association and ex-officio member of the Board of Managers, by the name of Augustine J. Bowe, upon information and belief, is in frequent and constant association with the following persons who are, upon information and belief, presently members of the Communist Party or former members of same:

Max Naiman, above mentioned attorney, a long standing member of the Communist Party, a sub-tenant of said Augustine J. Bowe, in the latter's former office suite at 7 South Dearborn Street, in the City of Chicago. Said Max Naiman was and is the principal attorney for the International Labor Defense which for years has handled all Communist Party legal matters;

J. I. Fishbein, who upon information and belief is now or was a leading member of the Communist Party;

All of the aforesaid persons who have been heretofore mentioned as being members of the Communist Party, or former members of the Communist Party, as well as many others too numerous to include herein.

Said Augustine J. Bowe has used his influence in the Chicago Bar Association to aid in having that organization oppose the Broyles Bills of the American Legion which were designed to expose Communism and Communist infiltration in Illinois organizations.

Said Augustine J. Bowe, on information and belief, was Chairman of the Campaign Committee of the Independent Voters of Illinois, a subsidiary of the organization known as the Americans for Democratic Action, which latter organization is dominated by Marxists and Leninists.

(l) The Librarian of the Chicago Bar Association and ex-officio member of the Board of Managers, by the name of Irwin J. Askow, upon information and belief, is at the present time an active member of the Communist Party or was such active member of the Communist Party. He was also a member of the National Lawyers' Guild which has been cited as a Communist front organization by the Attorney General of the United States.

(m) The Executive Librarian of the Chicago Bar Association, by the name of Charles A. McNabb, upon information and belief, is a member of the 10th Ward (City of Chicago) Unit of the aforesaid Progressive Party, and as such member he works closely with the Chairman of said Unit, one John P. Krall, who upon information and belief is now or has been an active member of the Communist Party.

(n) A member of the Board of Managers of the Chicago Bar Association, one Jerome S. Weiss, upon information and belief, is and has been an active member of the 50th Ward (City of Chicago) Unit of the aforesaid Progressive Party which, as heretofore stated, is the political arm of the Communist conspiracy in Illinois, and upon information and belief, said Jerome S. Weiss is sympathetic to the said Communist conspiracy and its purposes.

(o) A second member of the Board of Managers of the Chicago Bar Association by the name of Philip S. Makin, is and has been a leading member of the 40th Ward (City of Chicago) Unit of the aforesaid Progressive Party, and in the campaigns of said party in 1948 and 1952 when said party was openly supporting known members of the Communist Party for public office said Philip S. Makin made numerous addresses at precinct and ward meetings throughout the City of Chicago in behalf of said Communist party candidates who were running as candidates of the Progressive Party, and upon information and belief, said Philip S. Makin is and continues to be sympathetic to the Communist conspiracy and its purposes.

(p) A third member of the Board of Managers of the Chicago Bar Association, one Stanford Clinton, formerly known as Stanford Jessnick, has been active in the campaign of the aforesaid Progressive Party when said party was openly and avowedly espousing known Communists for public office, and upon information and belief, petitioner asserts that said Stanford Clinton is and continues to be sympathetic with the Communist movement.

(q) The Chairman of the Committee on Grievances of the Chicago Bar Association, one Benjamin H. Weisbrod, upon information and belief, has been active in promoting the various candidates of the Progressive Party, in close cooperation with the aforesaid Max Naiman and Robert J. Gorman, during all of the campaigns of the Progressive Party in 1948, 1950 and 1952, during which latter campaign the Progressive Party openly and avowedly supported known Communists for public office, and upon information and belief, said Benjamin H. Weisbrod, is sympathetic with the aims and purposes of the Communist Party. Upon information and belief, he has been active in securing funds for the defense of the Rosenbergs (Communist Atom Spies who were later executed) and Claude Lightfoot (Communist Party leader).

(r) A second member of the Committee on Grievances by the name of Thomas G. Bugan, on information and belief, is closely associated with the aforesaid attorney, Harry R. Booth, a known member of the Communist Party, and has frequently attended meetings of the Hyde Park Branch of that party in the basement at 5200 South Kimbark Avenue, Chicago, and upon information and belief, said Thomas G. Bugan is sympathetic to the aims and purposes of the Communist movement, if not an actual present or former member of the Communist Party.

(s) A third member of the Committee on Grievances by the name of Richard Mayer, upon information and belief, in April 1930 addressed the 20th Century Club in New York City, and reported publicly on a visit of five months spent as a traveler in Russia. He called the Soviet Union "humanity's great experiment", and told the members of the 20th Century Club at their meeting that in view of the feeling stirred in regard to what has been going on in Russia "we had better be careful, for before we notice it we shall be mixed up in a war." He then added "we have to be very careful that bad sentiment is not aroused and we ought at least to find out what is really going on in that country."

He described Russia as "a new civilization on an entirely new pattern." He also stated that "the Russians see that if they want to bring in the new civilization they must use all the means necessary. They have no consideration for somebody else, there is no attempt to put themselves in the place of the other fellow, and one naturally has to use force among such a people."

Upon information and belief, said Richard Mayer is sympathetic to the aims and purposes of the Communist movement.

(t) A fourth member of the Committee on Grievances

by the name of Norman H. Nachman, upon information and belief, is associated legally and politically with the aforesaid Progressive Party, and particularly the element thereof which is led by the aforesaid Robert J. Gorman, who, upon information and belief, is now or has been a member of the Communist Party. Petitioner is informed and believes that said Norman H. Nachman is sympathetic to the purposes of the Communist movement.

(u) A fifth member of the Committee on Grievances, Lawrence L. O'Connor (Chairman of Division IV of the Committee on Grievances which heard the complaint referred to against petitioner), upon information and belief, is working hand in hand with leading members of the aforesaid Progressive Party, including the aforesaid Gorman, Nachman, Groen and Hagstrom, and upon information and belief, is sympathetic to the aims and purposes of the Communist movement.

(v) A sixth member of the Committee on Grievances by the name of Carl V. Sussman (a member of the said Division IV of the Committee on Grievances which heard the complaint herein), upon information and belief, has been an active member of the aforesaid Progressive Party in the 50th Ward (City of Chicago) Unit, and, upon information and belief, is sympathetic to the aims and purposes of the Communist movement.

(w) A seventh member of the Committee on Grievances of the Chicago Bar Association, one Harry H. Kahn, upon information and belief, is now or has been a member of the Communist Party and is closely associated with one A. L. Koolish, who raises funds for Communist Party activities.

(x) An eighth member of the Committee on Grievances, one George N. Leighton on information and belief, is now or has been a member of the Communist Party.

4. All of the persons mentioned in 3(k), 3(l), 3(m), 3(n), 3(o), 3(p), 3(q), 3(r), 3(s), 3(t), 3(w) and 3(x) became Commissioners by virtue of their appointment or election to their respective offices subsequent to the commencement of the proceedings against petitioner before said Division IV.

5. The foregoing represents only a beginning of petitioner's investigation of communist infiltration in key offices of the Chicago Bar Association as petitioner has not had time to make a complete investigation in the short time since the filing of the report against him which made him realize that there was something wrong with the various committees involved in the proceedings against him.

WHEREFORE, petitioner prays that the Complainant Committee (the Unauthorized Practice Committee of the Chicago Bar Association) and the Committee on Grievances and Board of Managers of the Chicago Bar Association be required to answer this petition; that this petition and such answers be referred to a Special Commissioner, and that such Special Commissioner be ordered to report his recommendations, and upon a finding by this Court that this petition should be granted, that the same or another special Commissioner be appointed to hear the aforesaid report of Division IV of the Committee on Grievances and the objections thereto heretofore filed, and to report further to this Court thereon.

THEODORE W. MILLER,
Petitioner.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

THEODORE W. MILLER, being duly sworn, deposes and says that he is the petitioner whose name has been subscribed to the foregoing petition, and that the facts set forth therein are true of his own knowledge, except as to

those matters alleged to be upon information and belief, and as to such matters he believes them to be true.

.....

Subscribed and sworn to before me, this ..... day of January, 1955.

.....

Notary Public, Cook County, Illinois.

MOTION TO STRIKE FROM THE FILES AND OBJECTIONS TO MOTION OF RESPONDENT TO REFER REPORT OF DIVISION IV OF COMMITTEE ON GRIEVANCES OF CHICAGO BAR ASSOCIATION AND OBJECTIONS THERETO TO SPECIAL COMMISSIONER.

Now comes Charles Leviton, *amicus curiae*, and moves to strike from the files the motion of the respondent to "refer the report of Division IV of Grievance Committee of Chicago Bar Association," etc., and objects to the petition filed herein and in support of his motion and objections respectfully suggests the following:

1. The record in this case is large. Aside from the voluminous motions, petitions and oral argument, there are approximately one thousand pages of transcript and 244 exhibits consisting of 621 separate documents. The draft of report of Division IV-a, a hearing division of the Committee on Grievances, of which Lawrence L. O'Connor is chairman, consists of 195 pages.

2. On October 6, 1954, the draft of the report was served upon the parties and the matter was set for hearing on objections on October 20, 1954. Respondent asked for a continuance of the hearing and an extension of time to file objections, on October 13, and the matter was continued for hearing to December 8, 1954. On November 26, respondent made a further motion for extension of time and continuance of hearing, and thereafter on December 13 respondent filed his objections and the matter was reset for oral argument to January 12, 1955, at 1:15 p. m.

3. Respondent had been represented throughout the proceedings by Messrs. Howard B. Bryant and William E. Bertholf, Jr. On December 15, William E. Bertholf, Jr., withdrew as counsel, and on January 7, 1955, Mr. Howard B. Bryant also withdrew as counsel for respondent.

4. Throughout the lengthy hearings and until the filing of respondent's objections, no complaint was made as to the personnel of the Committee on Grievances or the Board of Managers of The Chicago Bar Association or any of the members thereof. The matter is now pending before the entire Committee on Grievances consisting of thirty-two members. The members of the hearing division consisted of the following:

Lawrence L. O'Connor, Chairman,
Henry A. Preston,
Francis B. Stine,
Carl B. Sussman,
Edmund J. Walsh.

The complaining committee, which is the Committee on Unauthorized Practice, was represented throughout the proceedings by Messrs. Curtis F. Prangley and John Rex Allen.

5. Neither James P. Hume (who has filed a declaration that he will take no part in the consideration or decision of this case), William C. Knecht, Ralph B. Mack, Stanford Clinton, Willis D. Nance, nor Hon. Elmer Holmgren was a member of the hearing panel. The undersigned, Charles Leviton, does not sit as a Commissioner of the Supreme Court. Jerome H. Leviton has taken no part in the investigation of the respondent's activities or in the proceedings against him.

6. The allegations contained in subdivision II made by the respondent are irrelevant, scurrilous, scandalous and impertinent. It is stated on page 9 of respondent's petition, in the first paragraph of subsection 3, as follows:

"He asserts, upon information received by him subse-

> quent to the filing of the report of Division IV of the Grievance Committee and his belief resulting from such information that the membership of both the Complaining Committee (Unauthorized Practice Committee of the Chicago Bar Association) and the Committee on Grievances and the Board of Managers (including officers) of the Chicago Bar Association who act as Commissioners of the Supreme Court are infiltrated with persons who are present or former members of the Communist party, persons who are present or former members of Communist front organizations and fellow travelers in that;"

and there follows an attack upon various members of the personnel of the Unauthorized Practice Committee, of the Committee of Grievances, various officers of The Chicago Bar Association and members of the Board of Managers, based entirely upon information and belief, which respondent now claims he received only "subsequent to the filing of the report of Division IV of the Grievance Committee." It is alleged on information and belief that various of said persons "are present or former members of the Communist party, persons who are present or former members of Communist front organizations and fellow travelers." These allegations on their face are irrelevant, scurrilous, scandalous and impertinent.

7. The record shows, among other things, that The Chicago Bar Association through its Committee on Unauthorized Practice of Law had obtained an injunction restraining one Corlis W. Jones, a layman, using the trade name of Mida's Trade Mark Services, from the unauthorized practice of law, in the Superior Court of Cook County, on August 28, 1951. The investigation of Mida's Trade Mark Services by the Committee on Unauthorized Practice of The Chicago Bar Association commenced long prior to respondent's purchase of this business, and in the injunction against Corlis Jones the respondent was not involved.

8. The report makes the following findings, among others:

533. The respondent testified (Report, p. 151, par. 423):

"Every customer of Mida's Trade Mark Services became a client of mine by the fact of my contract and purchase of Mida's Trade Mark Services from Mrs. Mida. It depends on what client it was for. When I say they were a client, they were a client of mine when I purchased Mida's Trade Mark Services to the extent of the work done for that client. A search client is mine for searches; a vigilance client, mine for vigilance."

He testified further (p. 151, par. 425):

"I was general counsel for Corlis Jones. He left Mida's Trade Mark Services on February 28, 1951, at the time I purchased it. He left because I took over the business. I was general counsel at that time."

534. The respondent testified (Report, p. 119, par. 323):

"I am the owner and also general counsel of Mida's Trade Mark Services. It is true there is no entity of Mida's Trade Mark Services except for that name, but it has been the practice of clients to deal with Mida's Trade Mark Services for legal matters. In actual fact I am the only person who is Mida's Trade Mark Services. When you ask me if Mida's Trade Mark Services is just another name for myself, my answer is, I cannot reverse the proceedings so far as all Mida's clients are concerned."

9. The efforts of the Committee on Unauthorized Practice were not directed against respondent in the first instance but against his predecessors, laymen who practiced law without a license under the name of Mida's Trade Mark Services. Respondent became involved only when he purchased the trade name and operated thereunder. The respondent filed his objections (consisting of 63 pages) to the draft of the report, on December 13, 1954. In those objections, no mention was made of the slanderous allega-

tions of "Communist infiltration" contained in paragraphs 2 to 5 of division II of his motion. On page 9 it is stated that he received the information "subsequent to the filing of the report," but on October 6, 1954 he was served with the draft of the report which recommended his suspension for five years, and when he filed his objections on December 13 he had had over two months to prepare them. It is obvious that the statements made by the respondent on information and belief were not made in good faith, had no basis, and are irrelevant, scandalous and impertinent.

It is respectfully submitted that the motion of the respondent above described should be stricken from the files as scurrilous, scandalous and impertinent.

Respectfully submitted,

CHARLES LEVITON,
Amicus Curiae.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

CHARLES LEVITON, being first duly sworn upon oath, states that he has read and subscribed to the above and foregoing motion and objections, and that the statements made therein are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 10th day of January, A. D. 1955.

Notary Public.

Trade Mark Rules 2.11-2.19 of U. S. Patent Office.

REPRESENTATION BY ATTORNEYS AND AGENTS.

AUTHORITY NOTE: §§ 2.11 to 2.19 interpret or apply 66 Stat. 795; 35 U. S. C. 31, 32.

§ 2.11 *Applicants may be represented by an attorney.* The owner of a trademark may file and prosecute his own application for registration of such trademark, or he may be represented by an attorney or other person authorized to practice in trademark cases. The Patent Office cannot aid in the selection of an attorney or agent.

§ 2.12 *Persons who may practice before the Patent Office in trademark cases.* (a) Attorneys at law: Attorneys at law in good standing admitted to practice before the highest court of any State or Territory of the United States or of the District of Columbia, may practice before the Patent Office in trademark cases. No register of attorneys who may practice before the Patent Office in trademark cases is maintained, and no application by an attorney at law for admission to such practice is required. A statement in the power of attorney, or in an accompanying paper, of the bar to which the attorney is admitted is required, and recognition is limited to each case.

(b) Non-lawyers: Persons who are not attorneys at law as specified in paragraph (a) of this section are not recognized to practice before the Patent Office in trademark cases, except that persons not attorneys at law who were recognized for such practice under the rules prior to August 15, 1955 (former § 100.42), and who in fact practiced in connection with applications for registration filed since July 5, 1947, will be recognized as agents to continue practice in trademark cases in the Patent Office: *Provided*, That, before December 31, 1955, a statement is filed with the Commissioner of Patents requesting that recognition to practice be so continued, specifying the basis therefor.

[NOTE: All persons registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed.]

(c) Foreign attorneys and agents: Any foreign attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent or trademark office of the country in which he resides and practices, may be recognized to represent applicants located in such country before the United States Patent Office in the presentation and prosecution of trademark applications: *Provided,* That the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent Office. Such recognition shall continue only during the period that the conditions specified obtain.

(d) Recognition of any person under this section is not to be construed as sanctioning or authorizing the performance of any acts regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No persons other than those mentioned in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Patent Office in trademark cases. Any person may appear for himself, or for a firm of which he is a member, or for a corporation or association of which he is an officer and which he is authorized to represent, if such person, firm, corporation, or association is a party to the proceeding.

(f) Persons otherwise entitled to be recognized to practice under this section may, nevertheless, be refused recognition for cause.

§ 2.13 *Professional conduct.* Attorneys and other persons appearing before the Patent Office in trademark cases

must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts.

§ 2.14 *Advertising.* (a) The use of display advertising, circulars, letters, cards, and similar material to solicit trademark business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or suspended or excluded from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs; simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of professional cards, listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories are not prohibited.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer.

§ 2.15 *Signature and certificate of attorney or agent.* Every paper filed by an attorney or other recognized person representing an applicant or party to a proceeding in the Patent Office must bear the signature of such attorney or person, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits required of applicants or registrants). The signature of an attorney or such other person to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. When

an applicant or party is represented by a registered firm, such papers must carry the signature of the firm, or the signature of an individual member of the firm or an individual registered attorney or agent employed by the firm and duly authorized to sign on behalf of the firm in addition to the firm name, and the certification constituted by the signing or presentation of the paper shall be a certification by and on behalf of the firm and by the individual.

§ 2.16 *Suspension or exclusion from practice.* The Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office any person, attorney, or agent shown to be incompetent or disreputable, or guilty of unethical or unprofessional conduct or gross misconduct, or who refuses to comply with the rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Patent Office, by word, circular, letter, or in any other manner. The reasons for any such suspension or exclusion shall be duly recorded. Proceedings for suspension, disbarment or exclusion from practice are conducted as provided in § 1.348. (See 35 U. S. C. 1952, sec. 32 for review of the Commissioner's action by the District Court of the United States for the District of Columbia.)

§ 2.17 *Power of attorney or authorization of agent.* Before any attorney or other recognized person will be allowed to inspect papers in any application prior to publication under § 2.81, or to take action of any kind in any application or proceeding, a written power of attorney or authorization, from the person or persons entitled to prosecute the application, or from the principal attorney or agent, must be filed in that particular application or proceeding.

§ 2.18 *Correspondence held with attorney or agent.* When an attorney or other recognized person shall have filed his power of attorney or authorization, duly executed, the correspondence will be held with him. Double correspondence with an applicant or other party and his attorney, or with two attorneys, will not be undertaken. If more than one attorney or agent be appointed, correspondence will be held with the one last appointed unless otherwise requested.

§ 2.19 *Revocation of power of attorney or authorization of agent.* A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and, when it is so revoked, the Office will communicate directly with the applicant or with such other attorney or agent as he may appoint. An attorney or agent will be notified of the revocation of his power or authorization.

Respondent's Exhibit C-2 from pages 12 and 13 of Additional Abstract (p. 231 of Transcript).

Respondent's Exhibit C-2 is a photostatic copy of a letter dated January 27, 1952, on the letterhead of James S. Valentine with his address shown as 25 East Washington Street, Chicago, Illinois, addressed to the Los Angeles Soap Company of Los Angeles, California, as follows:

> "Re: ANGELUS, ANVIL, MERMAID (design), and CHANDU trade-marks. Registrations Nos. 293,915; 293,016; 296,079 and 297,544 respectively.
>
> "Thank you for your letter of January 14th advising that preliminary steps have been taken to re-register the above noted trade-marks through Mida's Trade Mark Services. Your use of the word 're-register' is, no doubt, intended to mean renewal, these being quite different forms of applications. An application for re-registration would cost you $85.00 complete, while the total charge for a renewal applica-

tion, including the government fee, application services and any incidental expense, is $42.50.

"It is my understanding that Mida's Trade Mark Services is no longer permitted to file applications for the registration of trade-marks, or the renewal thereof, and must confine their activities solely to trade-mark searches, in fact, it was only for this reason that the writer severed his association of many years with them.

"In the event that I may be of service to you in connection with these renewals, your response will have immediate attention. Permit me to take advantage of this occasion to extend my best personal regards to Miss Banks.

Very truly yours,
JAS. S. VALENTINE."

Respondent's Exhibit H-2 from page 21 of Additional Abstract (p. 231 of Transcript).

Respondent's Exhibit H-2 is a photostatic copy of a letter dated August 16, 1951, on the stationery of Millwork Supplies, Inc., 214 Happ Road, Northfield, Illinois, purporting to be signed by one Ellis, as follows:

"August 16, 1951

"*Mida's Trade Mark Service,*
537 So. Dearborn Street
Chicago, Illinois

GENTLEMEN:

"Our trade mark Chef's Block used on a kitchen slicing board for sometime is an important name which we should like to register in Washington.

"Please inform us what you charge for doing this work. How many labels do you need?

Yours very truly,
MILLWORK SUPPLIES, INC.
By ELLIS."

Respondent's Exhibit I is a photostatic copy of a Petition and Power of Attorney, dated February 8, 1910, with

the petition and power of attorney being printed with the words "hereby constitute and appoint Arthur E. Wallace, 536 S. Clark Street, Chicago, Ill., Registered Attorney No. 5706, (General Counsel of Mida's Trade-Mark Bureau) —true and lawful attorney, to prosecute this application * * *." signed by Booth Fisheries Co. in an application to register a trade mark.

From pages 45, 46, 47 and 48 of Additional Abstract.

RESPECTING THE FINDINGS.

25. The report on page 182, par. 525, in referring to the practice of Mida's, prior to its acquisition by respondent, erroneously finds that proceedings in the Patent Office constitute the practice of law. In this connection there has been much confusion on the question of whether or not Patent Office proceedings of any kind constitute the practice of law. This confusion has resulted from the efforts of the Unauthorized Practice Committee of the Chicago Bar Association, the complainant in this case, in prosecution of proceedings in the courts to enjoin non-lawyers from handling such proceedings in the Patent Office.

The first such proceeding is the case of *Chicago Bar Association, et al.*, Appellees, v. *Wilbur Fisk Kellogg*, Appellant, 338 Ill. App. 618, wherein the trial court refused to enjoin the defendant Kellogg, who was a registered Patent agent, not a lawyer, from handling any proceedings in the Patent Office, and the Appellate Court likewise refused to enjoin him from handling Patent Office proceedings. However, the Appellate Court did hold that the defendant should be enjoined from rendering legal opinions and drafting legal documents such as contracts pertaining to transferring title or interests in patents. The defendant was not even enjoined from handling opposition, cancellation or interference proceedings in the Patent Office, al-

though he was not a lawyer but the decision contained some dictum to the effect that he would have been enjoined if he had not been permitted to practice in the Patent Office by the Commissioner of Patents.

All of the Supreme Court of Illinois decisions which increasingly extend the scope of what constitutes the practice of law since the Stock Yards Bank case (344 Ill. 462) under pressure from the Chicago Bar Association, lean heavily upon the Stock Yards Bank case.

In the case of *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346, the Chicago Bar Association succeeded in having the ever increasing scope of what constitutes the practice of law in the view of the Supreme Court of Illinois extended to include the practice before the Illinois State Industrial Commission. In that case, there was a powerful cleavage in the court as represented by the dissenting opinions where Mr. Justice Orr, who had written the opinion for the court in the Stock Yards Bank case, dissented, as did Mr. Justice Jones, and Mr. Justice Shaw.

Likewise, the dissenting opinion of Justice Shaw in this very close case should apprise the complainants of the fact that having prevailed upon the Supreme Court of Illinois in the Goodman case to invade the executive or administrative departments of Illinois, they are going too far in seeking to have the Supreme Court of Illinois invade the executive branch of the Federal Government.

Paragraph 29, pages 59 and 60, of the Additional Abstract.

29. Paragraph 536, page 185, of the Report is further objected to because it not only reads into the present conduct of respondent's practice the alleged practices of the past according to Valentine's testimony but it fails to bring out the contractual obligations of Mida's to give the

clients vigilance reports pertaining to conflicting marks sought to be registered by others appearing in the Official Gazette of the Patent Office. It was only by cross-examination of Valentine that this was brought out as follows:

"Q. You mentioned something about vigilance. Isn't it a fact that they used to invoice the clients for application to register a trade-mark and 20 years vigilance? A. Yes, I believe so.

Q. So that the money that they paid for their application was a consideration for the vigilance service, isn't that correct? A. Well, I can't recall it particularly.

Q. It wasn't free, was it? A. It was part of the registration service. * * *

Q. Have you forgotten about the service agreements? A. Oh, I thank you for that reminder. There was a service, a service agreement that was paid for, and as part of that service agreement they got so many searches per year or per term, and as part of that service agreement vigilance was included.

Q. They paid a minimum of $50 a year for that, didn't they? A. I have seen some as low as $25.

Q. Have you seen some considerably above $50? A. I have seen them for $100."

Unclean Hands of Complainants and Objections to the Report in Its Entirety on the Ground of Unfair Hearing from Pages 78-84 of Additional Abstract.

44. Respondent objects to the conclusion in par. 558, pp. 194-195 of the Report that respondent has violated Canons 22 and 29. The terms "candor" and "fairness" are relative terms and whether a lawyer has been or has not been candid or fair in a given situation requires a study of that situation. As heretofore pointed out in the previous paragraph of these objections respondent did the best he could under a difficult situation for which he was in no way to blame, and the fact that no client of his prede-

cessors, or of his, was misled to his detriment is best demonstrated by the fact that no such client has complained, this complaint having been founded upon the most reprehensible activities of competitors of respondent and compared to whose conduct the conduct of respondent has been most exemplary in its fairness and candor. The same applies to the finding in respect to Canon 29. At this point the unclean hands of the complainants ought to be reviewed as follows:

(a) Inclusion in the Complaint, without investigation (Testimony of Gerrit Groen—Report, p. 70, pars. 168, 169; p. 72, pars. 174, 176; p. 73, par. 180) of the unfounded false and defamatory charges against respondent pertaining to the alleged threatening telephone calls and the uninvestigated responses to fabrications of James S. Valentine. Calling these responses solicitations when they showed on their faces that they were responses and hence not solicitations. Including the fabricated Fallon copy without investigation.

(b) Seeking and obtaining a subpoena duces tecum on the basis of the foregoing fabrications.

(c) Abusing the process of the subpoena duces tecum by unlawfully seizing (Tr. 487-452) and running off with the records produced by respondent at the conclusion of a hearing (par. 21, p. 28 of these objections).

(d) Driving Mrs. Mida out of the trade mark business by harassment (Tr. 813, Report, p. 41, par. 70) and wrongfully pretending that matters before the Patent Office and obtaining state trade mark registrations constituted the practice of law and commencing these unfounded proceedings against respondent because he thwarted (Complainant's Exhibit 3 of March 26, 1953—Report, p. 109) their efforts to destroy Mida's Trade Mark Services for the benefit of their member Gerrit Groen and Valentine, all in

an attempt to accomplish by these proceedings what they failed to accomplish against Mrs. Mida. Having no regard for the obligation of Mrs. Mida toward her clients and having no regard for her clients' rights to protection from her according to the vigilance arrangements (Tr. 65, 121, 122, Report, p. 30, par. 27 and p. 38, par. 57) as to their trade marks and registrations.

(e) Using James S. Valentine continuously and persistently (Tr. 957) throughout the hearing to supply further trumped up "evidence" against respondent which was also accepted without question or investigation (Tr. 335, 336, Report p. 73, par. 180) by complainants because it benefited complainants' member Groen as well as Valentine, not to mention the two patent and trade mark attorneys who prosecuted the complaint. The fact that all this Valentine material was accepted initially (Report p. 70, pars. 168, 169; p. 72, pars. 174, 176; p. 73, par. 180) and continuously (Tr. 957) throughout these proceedings without investigation indicates beyond question that he was more closely aligned with Gerrit Groen than he or Groen testified to. The same inevitable conclusion is compelled by the spurious phone calls heretofore referred to, to clients of Groen (Tr. 404-412) and John Rex Allen (Tr. 769-770), one of the prosecutors of this Complaint, the fact that all of the phone calls were not reported by complainants in their Bill of Particulars (Report p. 16, par. 3) and the fact that the unreported calls (Tr. 404-412) demonstrated this conclusion even more than the reported ones. Added to these facts is the fact that while contending that Patent Office practice and obtaining state trade mark registrations constitutes the practice of law, they did nothing (Tr. 811) to interfere with this practice on the part of Valentine as they had done to others. To excuse this, the Commissioners in their report made the gratuitous finding (Report p. 182, par. 526) that Valentine did very little

after they had excluded (objections pp. 18, 19, pars. 7, 8 and 9) the bulk of respondent's evidence on the extent of Valentine's practice.

45. Respondent objects to the report in its entirety for the following reasons:

(a) The report does not indicate the makeup of the division of the Grievance Committee which purports to have made it but, on the other hand, those who are supposed to have made this report are cloaked in anonymity particularly in respect to those who concurred and the dissenters, if any. In this respect the report violates the basic principle that with every authority to perform a judicial or quasi-judicial act there should be a corresponding and commensurate responsibility therefor which is known to the parties affected, and anything short of that is repugnant to the American system as smacking of the Star Chamber.

(b) The hearing was unfair to respondent because this matter is merely a continuation of and an integral part of the wrongful efforts (*Chicago Bar Association* v. *Kellogg*, 338 Ill. App. 618) of the Chicago Bar Association through the complainant committee to put out of business all Patent Office practitioners who are not members of the bar, the investigative efforts of said association by its said committee against Mida's Trade Mark Services in the past having been also an integral part of such efforts and the instant proceeding being an act of revenge against respondent on the part of said association for respondent's thwarting the destruction by complainants of Mida's Trade Mark Services when he took over Mrs. Mida's clients and held them against further alienation by Gerrit Groen and James S. Valentine. The Grievance Committee under these circumstances, being just another agency of the Chicago Bar Association, could not be expected to give a

fair and impartial hearing to respondent upon a complaint by the Unauthorized Practice Committee, the first agency of the same association which made these efforts as an association project. In this connection a most significant fact is the recent appointment on the Grievance Committee of James P. Hume, law partner of Gerrit Groen.

Likewise significant is the appointment of members on the Grievance Committee who were members of the complaining committee against respondent who were active in the investigation conducted by complainant committee against Mida's Trade Mark Services in the past and presumably prejudicial thereby against respondent. Also in point on this question of prejudice on the part of the committee that purported to hear the complaint against respondent was the presence thereon (at least, sitting with the Grievance Committee and to a considerable extent controlling its ruling) of Charles Leviton, law partner of Jerome Leviton who was almost constantly a member of the complaining committee during and since the activities of the latter in attempting to force out of business non-lawyer practitioners before the Patent Office and throughout these proceedings. It is also noted for the record that the following members of the Grievance Committee and the Board of Managers presently sitting as Commissioners in judgment on the complaint of the Unauthorized Practice Committee against respondent and his exceptions to the Report were members of the Unauthorized Practice Committee during the previous investigations of Mida's Trade Mark Services and during the pendency of this complaint:

Stanford Clinton,	Willis Nance,
Elmer Holmgren,	Ralph B. Mack.

Respondent can no more expect a fair hearing from any tribunal of the Chicago Bar Association in a situation growing out of an Association project than the right hand

can fail to serve the left or vice versa. The thinly veiled pretense of objectivity and impartiality of the fourth division of the Grievance Committee in the "hearing" has been repeatedly apparent in the course of these proceedings by:

(1) The issuance of the subpoena duces tecum over respondent's objections (Objections p. 26, par. 20) on the basis of the uninvestigated (Report p. 70, pars. 168, 169; p. 72, pars. 172, 176; p. 73, par. 180) Valentine fabrications, the failure to prove a prima facie case against respondent and permitting a fishing expedition into respondent's business;

(2) the partial and favored treatment of Gerrit Groen as a witness (Objections p. 21, par. 18);

(3) the refusal (these objections p. 19, par. 10) to allow respondent to cross-examine Valentine as a hostile witness when he was recalled to show his motives, or to examine Valentine as to his motives (objections p. 14, par. 5);

(4) the reluctance (these objections p. 18, par. 8) to receive evidence of Valentine's activity especially in regard to Mida's clients (objections p. 14, par. 5) while at the same time making a finding (Report p. 182, par. 526) that Valentine did very little;

(5) the unfair abstract (these objections p. 1, par. 2; p. 6, par. 3; p. 7, par. 4) of both pleadings and evidence in the report;

(6) the acceptance (Report p. 187, par. 542) of entrapment "evidence" and reliance thereon in making findings (the objections p. 47, par. 35);

(7) the ignoring of and lack of concern over the unclean hands, heretofore mentioned on the part of complainant (these objections p. 58, par. 44);

(8) the acceptance (Report p. 183, par. 528; p. 186, par. 539 and p. 183, par. 528) of Valentine's and Green's testimony at face value notwithstanding their motives and repeated false swearings, while at the same time resolving every doubt against respondent and completely ignoring respondent's testimony in explanation of the matters charged against him (objections p. 43, par. 30; p. ——, par. ——; objections p. 39, par. 27; objections p. 36, par. 26; objections p. 47, par. 35);

(9) the acceptance (objections p. 39, par. 27) by the Commissioners of Valentine's testimony as to the alleged conduct of Mida's under Valentine's managership thereof as if it pertained to the conduct of Mida's under respondent;

(10) the pursuit (Report p. 195, par. 562) of respondent's auditor by seeking a contempt citation against him; and

(11) the making of the unfounded findings heretofore objected to followed by the further untenable finding (p. 195, par. 561 of the Report) in a pretense of sanctimony and the ultimate of hypocrisy that respondent's conduct has been dishonorable and tainted with moral turpitude and recommending (p. 195, par. 562 of the Report) respondent's suspension which further finding and recommendation are also objected to.

THEODORE W. MILLER,
Respondent.

Rule 59—Rules of the Supreme Court of Illinois.

Rule 59. The board of governors and its existing committee on grievances, and their successors as such, of the Illinois State Bar Association, and the board of managers and its existing committee on grievances, and their successors as such, of the Chicago Bar Association, are

hereby appointed as commissioners of this court and are empowered and charged to make investigations from time to time, as may be necessary, concerning practices of attorneys at law which tend to defeat the administration of justice or to bring the courts and the legal profession into disrepute. To this end, these commissioners are further empowered and charged to receive, entertain, inquire into and take proof concerning complaints against attorneys at law of this State, and may call to their assistance in such inquiries other members of the bar or bar associations of the State, make all necessary rules and regulations concerning the conduct of such inquiries and may themselves, or by such committees as they may designate, take the evidence of witnesses, as hereinafter provided.

No complaint against an attorney at law shall be entertained unless it is signed by the person or persons aggrieved or by the president and secretary of a regularly organized bar association or by the chairman of a regularly appointed committee of the Chicago or Illinois State Bar Associations and unless it is sufficiently clear and specific in its charges as reasonably to inform said attorney at law of the acts of misconduct he is claimed to have committed.

When a member of the bar, designated by the board of governors of the Illinois State Bar Association or the board of managers of the Chicago Bar Association so to do, shall file in the office of the clerk of the Supreme Court an affidavit showing that any respondent resides or has gone out of this State or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him, and stating the place of residence of such respondent, if known, or that upon diligent inquiry his place of residence cannot be ascertained, and stating his last known place of residence, the clerk of the Supreme Court shall cause publication to be made in some

newspaper of general circulation published in the county of respondent's place of residence or last known place of residence in this State, as set forth in such affidavit, containing notice of the pendency of the proceeding, the names of the complainant and the respondent, the title of this court and that of the commissioners of the court (the members of the board of governors and committee on grievances of the Illinois State Bar Association or of the board of managers and the committee on grievances of the Chicago Bar Association, as the case may be), and the time and place of the hearing of the case. He shall also within ten days from the first publication of such notice send a copy thereof by mail, addressed to such respondent whose residence or last known place of residence is stated in such affidavit. The certificate of the clerk that he has sent such copy in pursuance of this provision shall be evidence. Such notice shall be published for three consecutive weeks, the first insertion of which shall be at least thirty days before the date upon which the said cause shall be set for hearing by the commissioners; and unless said time has intervened no proceedings therein shall be had, but the said cause shall stand continued to a date at least thirty days after the said first date set for hearing, provided, that in case the respondent appears and consents to the hearing the cause may be heard at an earlier time.

The hearings before the commissioners or committees shall be private unless the respondent shall request that they be public.

Upon application by such commissioners, or committees, the clerk of this court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatum to take depositions. The commissioners and their committees are empowered to take and transcribe the evidence of witnesses, who shall be sworn by any person authorized by law to administer oaths, and the com-

missioners shall report to this court the failure or refusal of any person to attend and testify in response to any subpoena issued as herein provided.

At the conclusion of a hearing upon any complaint against any attorney, before such commissioners or committees, the board of governors or board of managers, as the case may be, shall, if action by this court of any kind is recommended, make report to this court of its conclusions of fact and law concerning the complaint, answer and proof; and thereupon such matters shall stand for hearing and disposition in this court. Such report shall be entered on the docket and entitled in the name of the respondent. Upon the filing of any such report with proof of service of a copy thereof on the respondent in the same manner as briefs are required by rule of this court to be served, the respondent therein shall have ten days from the date of such filing to file exceptions thereto, and shall, within twenty days after the filing of such exceptions, bring to this court the record and proofs, or such parts thereof as may be necessary to enable the court to pass upon such exceptions. The commissioners, upon request of the respondent and payment of the actual cost thereof, shall certify to the court the proofs and record, or such parts thereof as the respondent may designate. With such record the respondent shall file abstracts and printed briefs.

Upon the filing of exceptions to such report by the respondent, the board of governors or the board of managers, as the case may be, shall designate a member of the bar to file such certificates of proof, additional abstracts and briefs as may be deemed necessary fully to advise the court. Such additional abstract, if any, and brief shall be filed within twenty days after the filing of the respondent's abstracts and briefs, and respondent may reply thereto in ten days. The number of abstracts and printed briefs

and the manner of their service shall be governed by Rules 40 and 41 of this court.

REINSTATEMENT.

In all cases in which a person whose name has been stricken from the rolls wishes to be reinstated upon the roll of attorneys, he shall file his verified petition, and seven copies with the Clerk of this Court, setting forth:

(a) when his name was stricken, and if there was a reported opinion, the volume and page of the official reports of this Court where the opinion appears;

(b) the facts upon which he relies to show that he has rehabilitated himself.

Unless denied forthwith for insufficiency in form or substance, the clerk shall forward a copy of the petition to the Board of Governors and its existing Committee on Grievances and their successors as such of the Illinois State Bar Association or the Board of Managers and its existing Committee on Grievances and their successors as such of The Chicago Bar Association, as Commissioners of this Court under this rule, for the taking and reporting of proofs relevant to the question of the rehabilitation of the petitioner. The proceedings before the Commissioners shall wherever appropriate be governed by the provisions hereinbefore contained governing disciplinary proceedings.

At the conclusion of the hearing, the Board of Governors or the Board of Managers, as the case may be, shall make report to the Court of its recommendations and of its conclusions of fact and law concerning the petition and the proof. The petitioner, if the report should recommend denial of the petition, shall have ten days from the notice of the date of such filing to file exceptions thereto, but no oral or further arguments or briefs shall be received

in the matter, which shall be submitted for consideration by the Court on the report of the Commissioners and the exceptions of the petitioner, if the report shall recommend denial of his petition, and upon the report alone, if reinstatement is recommended. The Commissioners, upon request of the petitioner and payment of the actual cost thereof, shall certify to the Court the proofs and record or such part thereof as the petitioner may designate.

32/10

Office - Supreme Court, U.
FILED
MAY 10 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 860

IN THE MATTER OF

THEODORE W. MILLER, AN ATTORNEY,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

CHARLES LEVITON, *pro se*,
29 South La Salle Street,
Chicago 3, Illinois,

Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Rule 59.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

1. The Proceedings Below 2

2. The Basis for Jurisdiction 3

3. Questions Presented.

   (1) Has the petitioner set up any right, title, privilege or immunity under the Federal Constitution? 4

   (2) Will the Supreme Court of the United States take jurisdiction over a judgment involving a question peculiarly of state law? 4

Argument.

I. The Petitioner Has Not Set Up Any Right, Title, Privilege or Immunity Under the Federal Constitution 6

II. The Question Below Is One Peculiarly Involving State Law 7

III. Petitioner's Petition Is Frivolous and Vexatious 12

Conclusion 13

CITATIONS.

Bute v. People of the State of Illinois, 333 U. S. 640.. 5, 8
Central Land Company v. Laidley, 159 U. S. 103.....5, 12
Ex Parte Wall, 107 U. S. 265..... 5, 8
Hulbert v. Chicago, 202 U. S. 275, 50 L. Ed. 1026.... 4, 6
In re Isserman, 345 U. S. 286..... 5, 7
In re McCallum, 391 Ill. 400..... 8
In re Summers, 325 U. S. 561..... 11
McCallum v. Board of Managers and Grievance Committee of Chicago Bar Association, 326 U. S. 689.... 5, 8
Mitchell v. Greenough, 100 F. 2d 184.....5, 12
People ex rel. Chicago Bar Association v. Tinkoff, 399 Ill. 282 9
Phipps v. Wilson, 186 F. 2d 748.....5, 10
Selling v. Radford, 243 U. S. 46..... 5, 7
Tinkoff v. United States, 212 F. 2d 18..... 5, 9

Statutes.

Title 28 U. S. C., Section 1257..... 3, 6

Rule of Court Cited.

Rule 59 of Supreme Court of Illinois..... 2

Miscellaneous Citations.

Canons 22, 27, 28, 33, 35 and 47 of the Canons of Ethics Promulgated by the American, Illinois State and Chicago Bar Associations..... 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 860.

IN THE MATTER OF

THEODORE W. MILLER, AN ATTORNEY,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Comes now Charles Leviton, heretofore appearing as *amicus curiae* in the matter of Theodore W. Miller, an attorney, petitioner, the opinion of which is reported in 7 Ill. 2d 443, and says that a review on writ of certiorari should not be granted for the following reasons:

1. There is no special or important reason therefor, as required by Rule 19 of this Court.

2. The petitioner in the Court below raised no question under the Federal Constitution and the things and matters there presented were not within the contemplation of Rule 19.

In view of the fact that the petition for certiorari does not comply with the requisites of Rule 19 of this Court, and in an effort to bring order out of chaos, the undersigned makes the following suggestions, in as informal a

manner as possible, so that it will be readily apparent that the petition is frivolous in its nature and the questions raised require no formal or extensive briefing.

1. THE PROCEEDINGS BELOW.

The proceedings below were brought under the provisions of Rule 59 of the Rules of the Supreme Court of Illinois (appendix to petition, pages 63-68), which provides for the appointment of Commissioners of the Court to make investigations concerning practices of attorneys at law which tend to defeat the administration of justice or to bring the courts and the legal profession into disrepute. This Rule is in most respects not materially different from the Rules of Court for Disciplinary Proceedings adopted by the House of Delegates of the American Bar Association on February 21, 1956.

The Rule provides, among other things, that the Commissioners, if action by the Supreme Court of Illinois is recommended, shall make report to the Court of conclusions of fact and law concerning a complaint, answer and proof; that if after the report is filed the respondent files exceptions, a member of the bar shall be designated to file such certificates of proof, additional abstracts and briefs as may be necessary fully to advise the Court in support of the report of the Commissioners. An *amicus curiae* has been designated in each instance in these cases since 1933 when the system of reports by Commissioners was first adopted, and the undersigned has so participated in proceedings originating before the Committee on Grievances of The Chicago Bar Association as Commissioners of the Supreme Court of Illinois, since 1935.

The undersigned has filed with the Clerk the following portions of the record before the Supreme Court of Illinois, properly certified by the Clerk of that Court:

(1) The report of the Commissioners.

(2) The objections filed by the respondent to the report, later ordered to stand as exceptions.

(3) Brief and Argument of Respondent.

(4) Petition for Rehearing and Modification of Judgment, of Respondent.

An inspection of the objections of the respondent in the Supreme Court of Illinois, his brief and argument, and his petition for rehearing, fails to disclose the bringing before the State Court of any Federal question.

The petitioner had been cited before the Commissioners of the Supreme Court of Illinois in a disciplinary proceeding instituted by the Committee on Unauthorized Practice of The Chicago Bar Association. He was given an ample opportunity to defend himself (see report of Commissioners filed herewith) and made no complaint concerning the fairness of the hearings until he was served with a copy of the report (see Appendix to petition, pages 44-45), which contained the following recommendation (see report of Commissioners, par. 560, p. 195):

> "The Commissioners find that the respondent's conduct tends to defeat the administration of justice and to bring the courts and the legal profession into disrepute. The Commissioners recommend that the respondent be suspended from the practice of law for a period of five years."

2. THE BASIS FOR JURISDICTION.

The jurisdiction, if any, of this Court may be invoked under Title 28 of the Judicial Code, Section 1257.

3. QUESTIONS PRESENTED.

(1) Has the petitioner set up any right, title, privilege or immunity under the Federal Constitution?

An inspection of the record shows that the petitioner in the court below raised no question under the Federal Constitution. His answer and amendment to the answer to the complaint filed with the Commissioners of the Supreme Court (Report, pp. 16-22, par. 4; pp. 22-23, par. 5) are completely devoid of any tender of an issue involving the Federal Constitution. His objections, his brief and argument and his petition for rehearing likewise failed to raise any question under the Federal Constitution.

The petitioner cannot raise Federal questions here when he did not raise them in the Supreme Court of Illinois.

Hulbert v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026.

(2) Will the Supreme Court of the United States take jurisdiction over a judgment involving a question peculiarly of state law?

The mere fact that the decision below may have been erroneous does not confer jurisdiction upon the Court. This proposition is elementary. The record below, however, conclusively shows that respondent's conduct deserved discipline. Extremely careful consideration was given to every contention raised by him. He had ample opportunity to present his defenses and the Commissioners overcompensated in his favor to provide him a fair trial.

The undersigned does not intend at this stage of the proceedings to discuss the merits of the case at length. The report of the Commissioners, together with their findings and recommendations (pages 181-195, pars. 519-560), amply show that respondent is deserving of discipline, that he engaged in the wholesale solicitation of business and

violated Canons 22, 27, 28, 33, 35 and 47 of the Canons of Ethics promulgated by the American, Illinois State and Chicago Bar Associations. Even where practice before this Court is concerned, this Court has held that it will not hesitate to uphold the discipline of an attorney, where character requisite for membership in the bar is lacking, in the absence of some grave reason to the contrary.

In re Isserman, 345 U. S. 286, pp. 288, 289.

Selling v. *Radford*, 243 U. S. 46, pp. 50, 51.

McCallum v. *Board of Managers and Grievance Committee of Chicago Bar Association*, 326 U. S. 689.

Bute v. *People of the State of Illinois*, 333 U. S. 640, p. 659, 68 S. Ct. 763.

Ex Parte Wall, 107 U. S. 265, pp. 271, 290.

Tinkoff v. *United States*, 212 F. 2d 18, pp. 19-20.

Phipps v. *Wilson*, 186 F. 2d 748, p. 752.

Mitchell v. *Greenough*, 100 F. 2d 184, p. 185.

Central Land Company v. *Laidley*, 159 U. S. 103, p. 112.

ARGUMENT.

I.

The Petitioner Has Not Set Up Any Right, Title, Privilege or Immunity Under the Federal Constitution.

At no time either in his answer or amendment to the answer (see Report of Commissioners, pp. 16-22, par. 4; pp. 22-23, par. 5) to the complaint of the Committee on Unauthorized Practice, in his objections to the report of the Commissioners, in his brief and argument or in his petition for rehearing, did the petitioner contend that any part of the Federal Constitution was violated.

The Judicial Code, Title 28, Section 1257, clearly provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review and determination any cause wherein a final judgment or decree has been rendered by the highest court of a state in which a decision could be had, where "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." There being no such right set up or claimed, there is nothing for this Court to review.

In *Hulbert* v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026, the Court held that the plaintiff had failed to comply with the statutory provision in setting up a right under the Constitution of the United States; that there was no evidence in the record to show that the decision of either the trial court or the Supreme Court of Illinois, whose judgment was questioned, was invoked by plaintiff in error upon a right claimed under the Constitution of the United States. The writ of error was therefore dismissed. This rule is

so elementary and of such long standing that no further discussion of the issues involved would seem necessary.

II.

The Question Below Is One Peculiarly Involving State Law.

As the Court said in *In re Isserman*, 345 U. S. 286 (p. 288):

> "Disbarment by a state does not automatically disbar members of our bar, but this Court will, in the absence of some grave reason to the contrary, follow the finding of the state that the character requisite for membership in the bar is lacking, *Selling* v. *Radford*, 243 U. S. 46 (1917)."

And (p. 289):

> "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice."

In *Selling* v. *Radford*, 243 U. S. 46, Radford, who had been originally a member of the bar of the State of Michigan and then had been admitted to the Supreme Court of the United States, was respondent in an action to disbar him from the Supreme Court of the United States on the basis of an opinion and order of disbarment entered by the Supreme Court of Michigan. The Court held that it had no authority to re-examine or reverse as a reviewing court the action of the Supreme Court of Michigan in disbarring Radford. As to whether or not Radford should continue as a member of the Supreme Court of the United States, the Court held that it would recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear (p. 51):

> "1. That the state procedure from want of notice or opportunity to be heard was wanting in due proc-

ess; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

Similar questions were raised by William Wallace McCallum, who was disbarred by the Supreme Court of Illinois in *In re McCallum*, 391 Ill. 400, and whose appeal was dismissed for want of a substantial Federal question, in *McCallum* v. *Board of Managers and Grievance Committee of Chicago Bar Association*, 326 U. S. 689.

In *Bute* v. *People of the State of Illinois*, 333 U. S. 640, the Court held (p. 659), that even in a criminal case "the procedure followed by Illinois should not be held to violate the standard of permissible process of law broadly recognized by the Fourteenth Amendment unless the Illinois procedure violates 'the very essence of a scheme of ordered liberty' and that to continue it would 'violate a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."' "

In *Ex Parte Wall*, 107 U. S. 265, there was brought into question in a petition for mandamus filed in the Supreme Court of the United States, the validity of an order of a Federal District Judge prohibiting Wall from practicing at the bar of the District Court. The Court upheld the validity of the order of the District Court, and held that the attorney had had due process, in that (p. 290) "due notice was given to the petitioner, and a trial and hearing was had before the court, in the manner in which proceed-

ings against attorneys, when the question is whether they should be struck off the roll, are always conducted."

In *Tinkoff* v. *United States*, 212 F. 2d 18, the Court of Appeals for the Seventh Circuit had before it an effort by Tinkoff to file a petition to vacate an order denying him leave to file a petition for reinstatement to the bar of the Federal District Court. Tinkoff had been disbarred by the Supreme Court of Illinois and had been subsequently held guilty of contempt of court for the unauthorized practice of law in *People ex rel. Chicago Bar Association* v. *Tinkoff*, 399 Ill. 282, certiorari denied, 334 U. S. 833. The Court stated (pp. 19-20):

> "Seeking to annul these orders, appellant insists he possesses a 'right', to petition, of so potent a status that the district judge must receive and entertain his petition. This is the framework on which he hangs argument raising constitutional questions. Mr. Justice Vinson, when delivering the order of the Court, reported as *In re Isserman*, 1953, 345 U. S. 286, 289, 73 S. Ct. 676, 677, 97 L. Ed. 1013, aptly said:
>
> > "'* * * *There is no vested right in an individual to practice law.* Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice. That to the individual disbarred there is a loss of status is incidental to the purpose of the Court and cannot deter the Court from its duty to strike from its rolls one who has engaged in conduct inconsistent with the standard expected of officers of the Court.' (Italics ours.)
>
> "Certainly that quotation goes far toward cutting ground from under appellant's thesis. Nor is this a recent concept of the license to practice law. See: *Ex parte Wall*, 1882, 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552.
>
> • • • • •
>
> "Long ago Mr. Justice Cardozo, speaking for the Court reviewing *in re Rouss*, 1917, 221 N. Y. 81, 116 N. E. 782, 783, said:

> 'Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards * * *. Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of crime.' "

In *Phipps* v. *Wilson,* 186 F. 2d 748, the Court said (p. 752):

> "The real basis for plaintiff's complaint seems to be that it was the Chicago Bar Association which investigated the charges against him and recommended disbarment. Plaintiff claims that the Bar Association's committees were prejudiced against him. A similar objection was made and overruled in *In re McCallum,* 391 Ill. 400, 64 N. E. 2d 310, a disbarment proceeding. The court there pointed out that since 1933 committees of the Chicago Bar Association have acted as commissioners of the Illinois Supreme Court in disciplinary proceedings brought against attorneys at law in Chicago. See: Rule 59, Supreme Court Rules of Practice and Procedure, Ch. 110, Smith-Hurd Ill. Anno. Stat. § 259.59. The court emphasized that such commissioners are merely the court's agents for the purpose of gathering and reporting the evidence and that their recommendations are purely advisory. The court said 391 Ill. at page 418, 64 N. E. 2d at page 317: 'The recommendations made are purely advisory and this court acts only after an examination of the evidence in the case, except where no answer is made by respondent, and in these cases the charges and supporting evidence are examined before action is taken by this court.'
>
> "It is significant that McCallum did not file a petition for certiorari, but sought access to the United

States Supreme Court by direct appeal, attacking the constitutionality of Rule 59. However, the Supreme Court dismissed the appeal, holding that it did not raise any substantial federal question. *McCallum* v. *Board of Managers and Grievance Committee of Chicago Bar Association,* 326 U. S. 689, 66 S. Ct. 142, 90 L. Ed. 405.

"In considering whether the procedure herein before the Supreme Court of Illinois and the commissioners was a denial of due process, the applicable principles authoritatively stated in *Bute* v. *Illinois,* 333 U. S. 640, 659, 68 S. Ct. 763, 773, 92 L. Ed. 986, are: '* * * So here the procedure followed by Illinois should not be held to violate the standard of permissible process of law broadly recognized by the Fourteenth Amendment unless the Illinois procedure violates "the very essence of a scheme of ordered liberty" and its continuance would "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" * * *'

"As the amended complaint shows that plaintiff was apprized of the charges filed against him, and that he had a reasonable opportunity to defend thereagainst, the procedure complained against did not violate a scheme of ordered liberty or a deep rooted principle of justice. In other words, we find that plaintiff was not denied federal due process of law.

"Neither the propriety of the designation by the Supreme Court of Illinois of committees of the Chicago Bar Association to act as commissioners in disciplinary proceedings, nor the claim that such committees were prejudiced against the plaintiff herein raises a substantial federal question."

The case of *In re Summers,* 325 U. S. 561, has no application, the issue there being one which brought into question whether or not the principles of religious freedom which the Fourteenth Amendment to the Constitution of the United States secures against state action had been violated by the denial to Summers of the right to practice law in Illinois.

In *Mitchell* v. *Greenough*, 100 F. 2d 184, the Court said (p. 185):

> "We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. *Bradwell* v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929. In *Green* v. *Elbert*, 8 Cir., 63 F. 308, the Circuit Court of Appeals held that the conspiracy to deprive a lawyer of his right to practice law in the state courts was not a conspiracy to interfere with any right or privilege 'granted, secured or protected by the Constitution of the United States.'"

In *Central Land Company* v. *Laidley*, 159 U. S. 103, this Court said (p. 112):

> "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States."

III.

Petitioner's Petition Is Frivolous and Vexatious.

As an inspection of the record will show, the discipline administered by the court below was amply justified by petitioner's conduct, freely admitted in the record, concerning which there is in substance no controversy. The court exercised great leniency in suspending the petitioner from the practice of law for only one year, particularly in view of the fact that the petitioner had filed a false and scurrilous attack on various members of The Chicago Bar Association and the Commissioners of the Supreme Court, only after a report had been made recommending his discipline. A motion was made to strike petitioner's docu-

ment from the files, on the basis that it was scurrilous, scandalous and impertinent, and the Supreme Court of Illinois struck these allegations (see petition, pages 30-31), in accordance with the motion.

The order of the court striking respondent's scurrilous, scandalous and impertinent petition, and the judgment of suspension, apparently have had no effect upon the respondent, since he has again repeated these charges in his instant petition.

CONCLUSION.

It is submitted that Miller's petition for writ of certiorari should be denied, and that the writ should not be granted.

Respectfully submitted,

CHARLES LEVITON, *pro se,*
29 South LaSalle Street,
Chicago 3, Illinois,
Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Rule 59.